

(16,101.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 382.

GEORGE SCHOLLENBERGER, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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Petition for Writ of Error.

To the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States of America:

The petition of George Schollenberger respectfully sheweth—

That the Commonwealth of Pennsylvania brought suit against your petitioner into the supreme court of Pennsylvania for the eastern district, to July term, 1894, number 104, by an appeal from the judgment of and certiorari to the court of quarter sessions of Philadelphia county, October term, 1893, number 368, in which suit in said supreme court your petitioner was appellee and defendant in said court of quarter sessions and The Commonwealth of Pennsylvania was appellant and plaintiff in said court of quarter sessions.

That your petitioner was criminally indicted by the grand jury of said court of quarter sessions for an alleged violation of a certain act of the General Assembly of the Commonwealth of Pennsylvania of May 21st, 1885, the provisions of which are as follows:

2 "That no person, firm, or corporate body shall manufacture out of any oleaginous substance or any compound of the same, other than that produced from unadulterated milk or cream from the same, any article designed to take the place of butter or cheese produced from pure unadulterated milk, or cream from the same, or of any imitation or adulterated butter or cheese, nor shall sell or offer for sale or have in his, her, or their possession with intent to sell the same as an article of food."

That violations of the said act are made a misdemeanor, punished by a fine and imprisonment.

That on November 16th, 1893, the defendant pleaded not guilty in said suit, and on the same day a jury being called found a special verdict embodying the following facts:

That the defendant was the duly authorized agent of The Oakdale Manufacturing Company of Providence, Rhode Island, and as such agent was engaged in business in said city of Philadelphia as a wholesale dealer in oleomargarine and was not engaged in any other business, and as such agent had paid the U. S. internal-revenue tax on the business of a wholesale dealer in oleomargarine under act of Congress of August 2nd, 1886.

That on or before the second day of October, 1893, the said Oakdale Manufacturing Company shipped from Providence, Rhode Island, to said defendant a tub of oleomargarine, containing forty pounds, manufactured by the said The Oakdale Manufacturing Company.

That said package was an original package of such form, size, and weight as is used by producers and shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in the ordinary course of actual commerce, and said form, size, and weight were adopted in good

faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania.

That on the said second day of October, in the said city of Philadelphia, at the place of business aforesaid, the said defendant, as wholesale dealer as aforesaid, sold the said tub or package, the oleomargarine therein contained remaining in the original package, being the same package, with seals, marks, stamps, and brands unbroken, in which it was packed by said manufacturer in the said city of Providence, Rhode Island, and thence transported into the city of Philadelphia and delivered by the carrier to the defendant, and the said tub was not broken or opened on the said premises, and as soon as it was purchased it was removed from the said premises.

That there was no attempt or purpose on the part of defendant to sell the article as butter or any understanding on the part
4 of the purchaser that he was buying anything but oleomargarine, and the said oleomargarine is recognized by the act of Congress of August 2nd, 1886, as an article of commerce.

That on April 18th, 1894, the said court of quarter sessions entered a judgment upon the record upon the special verdict for defendant.

That on May 26th, 1894, The Commonwealth of Pennsylvania, plaintiff, sued out a writ of error to the said supreme court of the said State.

That on October 7th, 1895, the supreme court of Pennsylvania ordered the said judgment reversed and entered judgment on the said special verdict in favor of the Commonwealth of Pennsylvania, and said judgment was duly entered and recorded in the eastern district of Pennsylvania.

That said judgment of the said supreme court is a judgment of the highest court of record of the Commonwealth of Pennsylvania.

That said judgment of the said court is final.

That the right, title, privilege, and immunity claimed by your petitioner, defendant and appellee aforesaid, were claimed under the Constitution of the United States of America, art. I, sect. 8, providing, among other things, that Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

That the decision and judgment of the supreme court of Pennsylvania aforesaid was against the right, title, privilege, and immunity so claimed.

5 That said act of the General Assembly of the Commonwealth of Pennsylvania of May 21st, 1885, was and is null and void so far as it attempts to prohibit the sale of an article of commerce in the original package of commerce in the interstate commerce of the States, and therefore the said judgment of the said supreme court is null and void and contrary to the Constitution and statute laws of the United States of America in the premises.

Your petitioner therefore prays for the allowance of a writ of error to the supreme court of Pennsylvania for the eastern district

in order that said judgment of the supreme court of Pennsylvania may be re-examined and reversed or affirmed in the Supreme Court of the United States of America.

And he will ever pray.

GEORGE SCHOLLENBERGER.

George Schollenberger, being duly sworn according to law, deposes and says that the facts set forth in the above petition are true to the best of his knowledge and belief.

GEORGE SCHOLLENBERGER.

Sworn and subscribed before me this 14th day of October, 1895.

SAMUEL BELL,

*Commissioner Circuit Court U. S.,
Eastern District of Pennsylvania.*

And now, to wit, October 15th, 1895, citation awarded and writ of error allowed by me; bond to be given in a penalty of \$200.00.

GEORGE SHIRAS, JR.,

Associate Justice of the Supreme Court of the United States.

True copy.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,

Clerk C. C. U. S., E. D. of Pa.

5½ [Endorsed:] 104. July term, 1894, S. C. Pa. Commonon. of Pennsylvania v. George Schollenberger. Petition for citation. Writ of error. A. B. Roney, for petitioner.

6 THE UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the chief justice and associate justices of the supreme court of the Commonwealth of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said Commonwealth in which a decision could be had in the said suit between the Commonwealth of Pennsylvania and George Schollenberger, July term, 1894, No. 104, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said Commonwealth, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privileges, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commis-

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sion, a manifest error hath happened, to the great damage of the said George Schollenberger, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the sixteenth day of October, in the year of our Lord one thousand eight hundred and ninety-five.

Seal U. S. Circuit Court,
E. D. Pennsylvania.

SAMUEL BELL,

*Clerk Circuit Court United States,
Eastern District of Pennsylvania.*

7½ [Endorsed:] Supreme court of Pennsylvania, eastern district, July term, 1894. No. 104. George Schollenberger vs. Commonwealth of Pennsylvania. Writ of error. Filed Oct. 18, 1895, in supreme court.

8 UNITED STATES OF AMERICA, ss :

To the Commonwealth of Pennsylvania, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden within thirty days, at Washington, pursuant to a writ of error filed in the prothonotary's office of the supreme court of Pennsylvania for the eastern district, wherein George Schollenberger is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville Weston Fuller, Chief Justice of the Supreme Court of the United States, this eighteenth day of October, 1895.

GEORGE SHIRAS, Jr.,

Associate Justice of the Supreme Court of the United States.

Service accepted.

GEO. S. GRAHAM, *Dist. Att'y.*

Oct. 29, '95.

8½ [Endorsed:] Supreme court of Pennsylvania, eastern district, July term, 1894. No. 104. Commonwealth of Pennsylvania v. George Schollenberger. Copy of citation.

9 In the Supreme Court of Pennsylvania in and for the Eastern District of Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA }
 vs. } July Term, 1894. No. 104.
 GEORGE SCHOLLENBERGER.

Know all men by these presents that we, George Schollenberger and Dennis Kennedy, are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of two hundred dollars, to be paid to the said The Commonwealth of Pennsylvania, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 16th day of October, 1895.

Whereas lately, at a term of the supreme court of Pennsylvania in and for the eastern district of Pennsylvania, in a suit depending in said court between The Commonwealth of Pennsylvania, appellant, and George Schollenberger, appellee, judgment was rendered against the said appellee, and the said appellee having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Commonwealth of Pennsylvania, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said George Schollenberger, appellant in said Supreme Court of the United States, shall prosecute his writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGE SCHOLLENBERGER. [SEAL.]
 DENNIS KENNEDY. [SEAL.]

Sealed & delivered in the presence of us—

JOHN RODGERS.
 HARRY S. FINCH.

I approve of the above bond on behalf of the Commonwealth of Pennsylvania.

GEO. S. GRAHAM,
District Attorney,
 Per THOMAS W. BARLOW,
Ass't Dist. Att'y.

The above bond approved Oct. 18, '95.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the U. States.

I hereby certify that the above is a true and correct copy of the bond filed in above-entitled case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this 23rd day of October, A. D. 1895.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

10½ [Endorsed:] Supreme court of Pennsylvania, July term, 1894. No. 104. Commonwealth of Pennsylvania v. George Schollenberger. Copy of bond.

11 In the Supreme Court of Pennsylvania in and for the Eastern District.

Among the records and proceedings of the supreme court of Pennsylvania in and for the eastern district the following is thus contained:

Docket Entries.

COMMONWEALTH OF PENNSYLVANIA,	}	No. 104. July Term, 1894.
Plaintiff,		
vs.		
GEORGE SCHOLLENBERGER, Defendant.		

A. Morton Cooper, Carroll R. Williams; George S. Graham, district attorney. 104.

Appeal of plaintiff from the court of quarter sessions of the county of Philadelphia filed May 26, 1894.

Eo die, certiorari exit, returnable the first Monday of January, 1895.

December 27, 1894—Record returned and filed.

January 7, 1895—Assignments of error filed.

January 18, 1895—Argued.

12 October 7, 1895—The judgment is reversed and judgment is entered in favor of the Commonwealth upon the special verdict.

The record is remitted for purposes of sentence and execution.

Opinion by Williams, J.

October 18, 1895—Copy of petition for writ of error to the Supreme Court of the United States brought into office.

Eo die, writ of error brought into office.

Eo die, copy of citation brought into office.

Bond filed.

October 29, 1895—Copy of acceptance of service of citation brought into office.

I hereby certify that the above and foregoing is a true and correct copy of the docket entries in the above-entitled case so full and entire as appears of record in our said supreme court.

In testimony whereof I have hereunto set my hand and seal of said court, at Philadelphia, this twenty-third day of October, A. D. 1895.

CHAS. S. GREENE,
Prothonotary.

Appeal and Affidavit.

In the Supreme Court of Pennsylvania for the Eastern District.

13 *(Appeal and Affidavit.)*

Court of Quarter Sessions of the County of Philadelphia, October Term, 1893.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff, Appellant, }
vs. } No. 363.
GEORGE SCHOLLENBERGER, Defendant, Appellee.

Enter appeal on behalf of Commonwealth of Pennsylvania from the judgment of the court of quarter sessions of the county of Philadelphia entered in the above case on April 18, 1894.

A. MORTON COOPER,
CARROLL R. WILLIAMS,
GEORGE S. GRAHAM, *District Attorney,*
Attorneys for Plaintiff.

To Charles S. Greene, proth'y sup. ct., E. D.

COUNTY OF PHILADELPHIA, ss :

Eastburn Reeder, being duly affirmed, saith that the above appeal is not intended for delay.

EASTBURN REEDER.

Affirmed and subscribed this 15th day May, A. D. 1894.

CHARLES S. GREENE,
Prothonotary.

Endorsement: No. 104. July term, 1894, supreme court of Pennsylvania, eastern district. Commonwealth of Pennsylvania, appellant, vs. George Schollenberger. Appeal and affidavit. A. Morton Cooper, Carroll R. Williams; George S. Graham, district attorney. Filed May 26, 1894, in supreme court.

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Precipe for Certiorari.

In the Supreme Court of Pennsylvania for the Eastern District.

COMMONWEALTH OF PENNSYLVANIA,	} No. 368. Certiorari to the
Plaintiff, Appellant,	
vs.	
GEORGE SCHOLLENBERGER, Defendant,	Court of Quarter Sessions
Appellee.	of the County of Phila-
	delphia, of October Term,
	—.

Issue certiorari to the court of quarter sessions of the county of Philadelphia to bring up record and proceedings in a certain action in said court, No. 368, October term, 1893, wherein Commonwealth of Pennsylvania is plaintiff and George Schollenberger is defendant.

Returnable to next term *sec. reg.*

A. MORTON COOPER,
CARROLL R. WILLIAMS,
GEORGE S. GRAHAM, *District Attorney,*
Attorneys for Plaintiffs and Appellants.

To Charles S. Greene, proth'y sup. court, E. D.

Endorsement: No. 104. July term, 1894, supreme court of Pennsylvania, eastern district. Commonwealth of Pennsylvania, appellant, vs. George Schollenberger. Precipe for certiorari. A. Morton Cooper, Carroll R. Williams; George S. Graham, district attorney. Filed May 26, 1894, in supreme court.

15 *Record of the Court of Quarter Sessions of the County of Philadelphia.*

Writ of Certiorari.

EASTERN DISTRICT OF PENNSYLVANIA, }
City and County of Philadelphia, } ss :

The Commonwealth of Pennsylvania to the justices of the court of quarter sessions for the county of Philadelphia, Greeting:

We, being willing for certain causes to be certified of the matter of the appeal of Commonwealth of Pennsylvania from the judgment in No. 368, October sessions, 1893, wherein the said appellant was plaintiff and George Schollenberger was defendant—

Judgment entered in the above case on April 18, 1894, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the first Monday of January next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the [SEAL.] twenty-sixth day of May, in the year of our Lord one thousand eight hundred and ninety-four.

CHARLES S. GREENE,

Prothonotary.

16 Endorsement: 368. October session, 1893. Quarter sessions. Philadelphia. No. 104. July term, 1894, supreme court. Commonwealth of Pennsylvania, appellant, *vs.* George Schollenberger. Certiorari to the court of quarter sessions for the county of Philadelphia, returnable the first Monday of January, 1895. Rule on the appellee to appear and plead on the return day of the writ. Brought into office May 26, 1894. A. Morton Cooper, Carroll R. Williams; George S. Graham, district attorney.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

J. I. CLARK HARE. [L. s.]

Filed Dec. 27, 1894, in supreme court.

True Bill.

CITY AND COUNTY OF PHILADELPHIA, ss:

In the Court of Quarter Sessions of the Peace for the City and County of Philadelphia, October Sessions, 1893.

The grand inquest of the Commonwealth of Pennsylvania, inquiring for the city and county of Philadelphia, upon their respective oaths and affirmations do present that George Schollenberger, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully sell as an article of food a certain article manufactured out of some oleaginous substance and compound

17 of the same other than that produced from unadulterated milk and cream from the same, the said article being designed to take the place of butter produced from pure, unadulterated milk and cream from the same, contrary to the from of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said George Schollenberger, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did

then and there unlawfully sell as an article of food a certain substance in imitation of butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their respective oaths and affirmations aforesaid do further present that the said George Schollenberger, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully sell as an article of food adulterated butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said George Schollenberger, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully offer for sale as an article of food a certain article manufactured out of some oleaginous substance and compound of the same other than that produced from unadulterated milk and cream from the same, the said article being designed to take the place of butter produced from pure, unadulterated milk and cream from the same, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

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And the grand inquest aforesaid upon their respective oaths and affirmations aforesaid do further present that the said George Schollenberger, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this

20 court, did then and there have in his possession, with intent to sell as an article of food, a certain article manufactured out of some oleaginous substance and compound of the same other than that produced from unadulterated milk and cream from the same, the said article being designed to take the place of butter produced from pure, unadulterated milk and cream from the same, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said George Schollenberger, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully have in his possession, with intent to sell as an article of food, a certain substance in imitation of butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said George Schollenberger, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully have in his possession, with intent to sell as an article of food, adulterated butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

GEORGE S. GRAHAM,
District Attorney.

21 COMMONWEALTH
vs.
GEORGE SCHOLLENBERGER. }

List of Witnesses.

1. Evan R. Penrose, deputy collector of internal revenue, P. O. bldg., Philada.
2. E. F. Donnelly, 36 North 16th street, Philada.
3. W. J. Sloan, room 35, 1326 Chestnut " "
4. J. Berry, 606 Lombard St., "
5. Isaac H. Rocap, 107 North 5th St., "
6. James Anderson, room 35, 1326 Chestnut street, "
7. Dr. William Beam, 715 Walnut street, "
8. Dr. Henry Leffmann, 715 Walnut street, "

The following witnesses are retail dealers in oleo. who have bought the article from the defendant. The subpœnas for them should require them to produce all bills and receipts and cancelled

checks issued in payment for oleo. purchased from the defendant in the past two years :

1. John A. Frost, stall 189 Union m'k't, Callowhill & N. 2nd Sts., Philada.
2. George Stewart, 11th-street market, Philada.
3. Samuel Hance, 2445 North 2nd street, "
4. Ellen M. Mason, 751 Passyunk avenue, "
5. Charles Bohme, 1619 Federal street, "

Endorsement: List of witnesses in case of Commonwealth of Pennsylvania *vs.* George Schollenberger. Nov. 13, '93.

22 Endorsement: Witnesses: Evan R. Penrose, P. O. bldg., Philada, Pa.; James Anderson, E. F. Donnelly, W. J. Sloan, A. D. Cassell, 1326 Chestnut St., Philada., Pa.; Dr. Wm. Beam, 715 Walnut St., Phila., Pa.; bail, \$500. George Stewart, No. 1703 Lombard St., 7th ward, to October, 1893. District attorney. No. 368, October sessions, 1893. Commonwealth of Pennsylvania *vs.* George Schollenberger, 219 Callowhill St. Selling imitation butter, having the same in possession with intent to sell as an article of food. True bill. C. A. Porter, foreman. Oct. 16, 1893. 11, 16, '93, the defendant, being arraigned, plead not guilty. Dist. att'y sim., *et* issue.

Verdict, — — —, 189—.

Sentence, —. Recognizance of defendant and suret- forfeited.

COMMONWEALTH OF PENNSYLVANIA }
vs.
 GEORGE SCHOLLENBERGER. }

Special Verdict.

The jury find the following facts :

(1.) The defendant, George Schollenberger, is a resident and citizen of the Commonwealth of Pennsylvania and is the duly authorized agent in the city of Philadelphia of The Oakdale Manufacturing Company of Providence, Rhode Island.

(2.) The said Oakdale Manufacturing Company is engaged in the manufacture of oleomargarine in the said city of Providence and State of Rhode Island, and as such manufacturer has complied with all the provisions of the act of Congress of August 2nd, 1886, entitled "An act defining butter; also imposing a tax upon and regulating the manufacture, sale, importation, and ex-
 23 portation of oleomargarine."

(3.) The said defendant, as agent aforesaid, is engaged in business at 219 Callowhill street, in the city of Philadelphia, as wholesale dealer in oleomargarine, and was so engaged on the 2nd day of October, 1893, and is not engaged in any other business, either for himself or others.

(4.) The said defendant, on the 1st day of July, 1893, paid to the collector of internal revenue of the first district of Pennsylvania the

sum of four hundred and eighty dollars as and for a special tax upon the business, as agent for the Oakdale Manufacturing Company, in oleomargarine, and obtained from said collector a writing in the words following:

Stamp for
\$480
per year.
No. A 434.

United States
internal revenue.

Special tax,
\$480
per year.
No. A 434.

Received from George Schollenberger, agent for the Oakdale Manufacturing Company, the sum of four hundred and eighty dollars for special tax on the business of wholesale dealer in oleomargarine, to be carried on at 219 Callowhill street, Philadelphia, State of Pennsylvania, for the period represented by the coupon or coupons hereto attached.

Dated at Philadelphia, Pa., July first, 1893.

[SEAL.]

\$480.

WILLIAM H. DOYLE,
Collector, First District of Penna.

24 The following clauses appear on the margin of the above:

This stamp is simply a receipt for a tax due the Government and does not exempt the holder from any penalty or punishment provided for by the law of any State for carrying on the said business within such State and does not authorize the commencement nor the continuance of such business contrary to the laws of such State or in places prohibited by a municipal law. See section 3243, Revised Statutes U. S.

Severe penalties are imposed for neglect or refusal to place and keep this stamp conspicuously in your establishment or place of business. Act of August 2nd, 1886.

Attached to this were coupons for each month of the year in form as follows:

Coupon for special tax on wholesale dealer in oleomargarine for October, 1893.

(5.) On or before the said second day of October, 1893, the said Oakdale Manufacturing Company shipped to the said defendant, their agent aforesaid, at their place of business in Philadelphia, a package of oleomargarine separate and apart from all other packages, being a tub thereof containing forty pounds, packed, sealed, marked, stamped, and branded in accordance with the requirements of the said act of Congress of August second, 1886. The said package was an original package, as required by said act, and was of such form, size, and weight as is used by producers or shippers for

25 the purpose of securing both convenience in handling and security in transportation or merchandise between dealers in the ordinary course of actual commerce, and the said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania, said package being one of a number of similar packages forming one consignment shipped by the said company to the said defendant. Said packages

forming said consignment were unloaded from the cars and placed in defendant's store and then offered for sale as an article of food.

(6.) On the said second day of October, 1893, in the said city of Philadelphia, at the place of business aforesaid, the said defendant, as wholesale dealer aforesaid, sold to James Anderson the said tub or package mentioned in the foregoing paragraph, the oleomargarine therein contained remaining in the original package, being the same package, with seals, marks, stamps, and brands unbroken, in which it was packed by the said manufacturer in the said city of Providence, Rhode Island, and thence transported into the city of Philadelphia and delivered by the carrier to the defendant; and the said tub was not broken nor opened on the said premises of the said defendant, and as soon as it was purchased by the said James Anderson it was removed from the said premises.

(7.) The oleomargarine contained in said tub was manufactured out of an oleaginous substance not produced from unadulterated milk or cream, and was an article designed to take the place of
26 butter, and sold by the defendant to James Anderson as an article of food; but the fact that the article was oleomargarine and not butter was made known by the defendant to the purchaser, and there was no attempt or purpose on the part of the defendant to sell the article as butter or any understanding on the part of the purchaser that he was buying anything but oleomargarine, and the said oleomargarine is recognized by the said act of Congress of August 2nd, 1886, as an article of commerce.

(8.) The above transaction specifically found by the jury is one of many transactions of like character made by the defendant during the last two years.

Endorsement: Commonwealth of Pennsylvania vs. George Schollenberger. No. 368. October, 1893. Nov. 16, 1893. Special verdict found by the jury.

Motion for Judgment.

COMMONWEALTH OF PENNSYLVANIA	} 368. Oct., 1893.
vs.	
GEORGE SCHOLLENBERGER.	

Selling imitation butter, having the same in possession with intent to sell as an article of food.

George E. Paul, Oct., 370, 1893. I. Otis Paul, Oct., 372, 1893.

And now, Nov. 16, 1893, comes the district attorney and moves the court for judgment upon the special verdict.

And now, April 18th, 1894, judgment for defendants on special verdict.

J. I. C. H.

27 Endorsement: Commonwealth of Pennsylvania vs. George Schollenberger, George E. Paul, and I. Otis Paul. Motions for judgment. Filed Nov. 16, 1893.

October Sessions (1893).

COM.

vs.

GEORGE SCHOLLENBERGER.

} (368). True Bill.

Selling imitation butter, having the same in possession with intent to sell as an article of food.

November 16th, 1893—Present: Hon. J. I. Clark Hare. Defendant present, and, being arraigned, pleads not guilty.

District attorney *sim.*, *et issue*.

Same day, defendant present; a jury, being called, answer, appear, and are chosen as follows: Edward Hanley, Michael J. Hayden, Samuel Cress, Thos. Wolf, Frank Rantz, Jno. Hablutzel, Harry Boyer, Samuel Strang, Harry M. White, Jno. Burkmire, A. Stevens, Matthew Haas, who were duly empanelled, sworn, or affirmed, and, being charged by the court, do find that, 1st, the defendant, George Schollenberger, is a resident and citizen of the Commonwealth of Pennsylvania, and is the duly authorized agent in the city of Philadelphia of the Oakdale Manufacturing Company of Providence, Rhode Island; 2nd, the said Oakdale Manufacturing Company is engaged in the manufacturing of oleomargarine in the said city of Providence and State of Rhode Island, and as such manufacturer has complied with all the provisions of the act of 28 Congress of August 2nd, 1886, entitled An act defining butter; also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine.

3rd. The said defendant, as agent aforesaid, is engaged in business at 219 Callowhill St., in the city of Philadelphia, as wholesale dealer in oleomargarine, and was so engaged on the 22nd day of October, 1893, and is not engaged in any other business, either for himself or others.

4th. The said defendant, on the 1st day of July, 1893, paid to the collector of internal revenue of the first district of Pennsylvania the sum of four hundred and eighty dollars as and for a special tax upon the business, as agent for the Oakdale Manufacturing Company, in oleomargarine, and obtained from said collector a writing in the words following:

Stamp for
\$480
per year.
No. A 434.

United States
internal revenue.

Special tax,
\$480
per year.
No. A 434.

Received from George Schollenberger, agent for the Oakdale Manufacturing Company, the sum of four hundred and eighty dollars for special tax on the business of wholesale dealer in oleomargarine, to be carried on at 219 Callowhill street, Philadelphia, State of Pennsylvania, for the period represented by the coupon or 29 coupons hereto attached.

Dated at Philadelphia, Pa., July 1st, 1893.

[SEAL.]

\$480.

WILLIAM H. DOYLE,
Collector, First District of Penna.

The following clauses appear on the margin of the above: This stamp is simply a receipt for a tax due the Government, and does not exempt the holder from any penalty or punishment provided for by the law of any State for carrying on the said business within such State, and does not authorize the commencement nor the continuance of such business contrary to the laws of such State or in places prohibited by a municipal law. See section 3243, Revised Statutes U. S.

Severe penalties are imposed for neglect or refusal to place and keep this stamp conspicuously in your establishment or place of business. Act of August 2nd, 1886. Attached to this were coupons for each month of the year in form as follows:

Coupons for special tax on wholesale dealer in oleomargarine for October, 1893.

(5th.) On or before the said second day of October, 1893, the said Oakdale Manufacturing Company shipped to the said defendant, their agent aforesaid, at their place of business in Philadelphia, a package of oleomargarine, separate and apart from all other packages, being a tub thereof containing forty pounds, packed, sealed,

marked, stamped, and branded in accordance with the requirements of the said act of Congress of August second, 1886. The said package was an original package, as required by said act, and was of such form, size, and weight as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation or merchandise between dealers in the ordinary course of actual commerce, and the said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania, said package being one of a number of similar packages forming one consignment shipped by the said company to the said defendant. Said package-forming said consignment were unloaded from the cars and placed in defendant's store and then offered for sale as an article of food.

(6th.) On the said second day of October, 1893, in the said city of Philadelphia, at the place of business aforesaid, the said defendant, as wholesale dealer aforesaid, sold to James Anderson the said tub or package mentioned in the foregoing paragraph, the oleomargarine therein contained remaining in the original package, being the same package, with seals, marks, stamps, and brands unbroken, in which it was packed by the said manufacturer in the said city of Providence, Rhode Island, and thence transported into the city of Philadelphia and delivered by the carrier to the defendant, and the said tub was not broken or opened on the said premises of the said defendant, and as soon as it was purchased by the said James Anderson it was removed from the said premises.

(7th.) The oleomargarine contained in said tub was manufactured out of an oleaginous substance not produced from unadulterated milk or cream, and was an article designed to take the place of butter, and sold by the defendant to the said James Ander-

son as an article of food ; but the fact that the article was oleomargarine and not butter was made known by the defendant to purchaser, and there was no attempt or purpose on the part of the defendant to sell the article as butter or any understanding on the part of the purchaser that he was buying anything but oleomargarine, and the said oleomargarine is recognized by the said act of Congress of August 2nd, 1886, as an article of commerce.

(8th.) The above transaction specifically found by the jury is one of many transactions of like character made by the defendant during the last two years.

Whereupon the district attorney, on behalf of the Commonwealth, moves the court for judgment upon the verdict in favor of the Commonwealth and against the defendant.

November 27th, 1893—present, Hon. J. I. C. Hare—motion for judgment argued and held under advisement.

April 18th, 1894—present, Hon. J. I. Clark Hare—judgment entered for defendant upon the special verdict.

May 26th, 1894.—Certiorari brought into office.

32

Assignments of Error.

Supreme Court for Eastern District, July Term, 1894.

COMMONWEALTH OF PENNSYLVANIA

vs.

GEORGE SCHOLLENBERGER, Defendant Below and Appellee.

No. 104.

Appeal by plaintiff from the judgment of and certiorari to the court of quarter sessions of Philadelphia county, October term, 1893, No. 368.

The Commonwealth in the above case assigns as error :

1. The court erred in entering judgment for the defendant on the special verdict.
2. The court erred in not entering judgment for the plaintiff on the special verdict.

A. MORTON COOPER,
CARROLL R. WILLIAMS,
GEORGE S. GRAHAM,

Per C. R. W., *District Attorney,*
Attorneys for the Commonwealth.

Endorsement: No. 104. July term, 1894, supreme court, eastern district. Commonwealth of Pennsylvania, appellant, vs. George Schollenberger. Assignments of error. A. Morton Cooper, Carroll R. Williams ; George S. Graham, district attorney, for Commonwealth. Filed January 7, 1895, in supreme court.

Opinion of the Supreme Court of Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA, Ap't, }
 vs. } 104.
 GEORGE SCHOLLENBERGER.

Appeal from the judgment of the court of quarter sessions of Philadelphia county, July term, 1894.

WILLIAMS, J.:

This appeal is from a judgment entered upon a special verdict in the same form as that considered in the opinion just filed in Commonwealth vs. J. Otis Paul. The questions raised are the same, and the same judgment must be rendered. The judgment is reversed and judgment is entered in favor of the Commonwealth upon the special verdict. The record is remitted for purposes of sentence and execution.

Endorsement: 104. July term, 1894. Commonwealth of Pennsylvania, ap't, vs. George Schollenberger. Appeal from the judgment of the court of quarter sessions of Philadelphia. 17th January, 1895. Reversed. Mem.: To follow Commonwealth of Pennsylvania vs. George E. Paul. Filed Oct. 7, 1895, in supreme court.

I hereby certify that the above and foregoing is a true and
 34 correct copy of the opinion in the above-entitled case, so full and entire as appears of record in our said supreme court.

Seal of the Supreme Court
 of Pennsylvania, Eastern
 District, 1776.

In testimony whereof I have here-
 unto set my hand and seal of said court,
 at Philadelphia, this twenty-third day
 of October, A. D. 1895.

CHAS. S. GREENE,

Prothonotary.

35 UNITED STATES OF AMERICA, }
State of Pennsylvania, } ss:

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages 1 to 34, inclusive, is a true and faithful copy of the record and proceedings of the supreme court of the State of Pennsylvania, eastern district, in a certain suit therein pending, wherein Commonwealth of Pennsylvania was appellant and George Schollenberger was appellee.

In testimony whereof I have hereunto subscribed my name and
 Seal of the Supreme Court court of the State of Pennsylvania,
 of Pennsylvania, Eastern eastern district, at Philadelphia, the
 District, 1776. 12th day of November, 1895, and in
 the one hundred and twentieth year of
 the Independence of the United States.

CHAS. S. GREENE,

*Prothonotary of the Supreme Court of
 Pennsylvania, Eastern District.*

36 I, James P. Sterrett, chief justice of the supreme court of Pennsylvania, do hereby certify that Charles S. Greene was at the time of signing the annexed attestation and now is prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this 12th day of November, one thousand eight hundred and ninety-five.

JAMES P. STERRETT,
Chief Justice Sup. Court.

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable James P. Sterrett, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania in and for the eastern district, at Philadelphia, this 12th day of November, one thousand eight hundred and ninety-five.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

37 Supreme Court of U. S., Oct. Term, 1895.

GEORGE SCHOLLENBERGER, Plaintiff in Error, }
v. } No. 811.
THE COMMONWEALTH OF PENNSYLVANIA. }

Assignments of Error.

1st. The court erred in reversing the judgment of the court of quarter sessions, entered upon the findings of fact of the special jury, and in entering judgment for the Commonwealth of Pennsylvania.

2nd. The court erred in not affirming the judgment of the court of quarter sessions upon the findings of fact of the special verdict.

3rd. The court erred in failing to hold the act of 21st of May, 1885, null and void, in so far as it attempted to prohibit the sale of an article of interstate commerce in the original packages of commerce.

4th. The court erred in holding that the sale by the defendant below was not a sale of an article of interstate commerce in the original package of commerce.

5th. The court erred in assuming that the sale by the defendant below was at retail; the special verdict found that the defendant

below was a wholesale dealer and was not engaged in any other business.

6th. The court erred in apparently holding that, in the absence of any legislation in Pennsylvania with reference to the sale of oleomargarine by retail or by wholesale, a sale by retail would be void, although a sale by wholesale would be valid under the interstate-commerce law.

38 7th. The court erred in assuming that the sale by the defendant below was a sale to a consumer. The facts found by the special verdict were, "the said defendant, as wholesale dealer aforesaid, sold the said tub or package mentioned," without any finding as to the occupation of the purchaser.

8th. The court erred in holding, as it apparently did, that a sale to a consumer of an article of interstate commerce is not protected by art. 1, sec. 8, of the National Constitution, even though such sale was a sale in the original package of commerce.

9th. The court erred in holding that the sale by the defendant below was a sale of "a package devised by a non-resident manufacturer or put up by him, adapted for sale at retail to individual consumers." The findings of fact of the special verdict were that the said package "was of such form, size, and weight as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandize in the ordinary course of actual commerce."

10th. The court erred in holding that the package sold by the defendant below was devised by the manufacturer of such form and size as to evade the laws of the State. The findings of the special verdict were, "the said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania."

A. B. RONEY,
R. C. DALE,
H. R. EDMUNDS,
Counsel for Plaintiff in Error

Endorsed on cover: Case No. 16,101. Pennsylvania supreme court. Term No., 382. George Schollenberger, plaintiff in error, vs. The Commonwealth of Pennsylvania. Filed December 5th, 1895.

**IN THE SUPREME COURT OF PENNSYLVANIA
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.**

JULY TERM, 1894.

COMMONWEALTH OF PENNSYLVANIA

VS.

GEORGE SCHOLLENBERGER,
Defendant below and Appellee.

No. 104.

Appeal by plaintiff from the judgment of the Court of Quarter Sessions of Philadelphia County.

I, JAMES P. STERRETT, Chief Justice of the Supreme Court of Pennsylvania at the present time and upon the argument and hearing of the above entitled appeal, do hereby certify :

I. That upon the said argument and hearing the validity of the statute of Pennsylvania of May 21, 1885, was drawn in question by the said defendant George Schollenberger on the ground of its being repugnant to section 8 of Article I of the Constitution of the United States, and that the decision of the said Supreme Court of Pennsylvania was in favor of the validity of the said statute.

II. That upon the said argument and hearing the said defendant George Schollenberger specially set up and claimed the right, privilege and immunity under the said section 8 of Article I of the Constitution of the United States of selling an article of interstate commerce, and that the decision of the said Supreme Court of Pennsylvania was against the said right, privilege and immunity so set up and claimed as aforesaid.

III. That upon the said argument and hearing the said defendant George Schollenberger specially set up and claimed that the said statute of Pennsylvania of May 21, 1885, was null and void under the Constitution of the United States in so far as it attempted to prohibit the sale of an article of interstate commerce in the original packages of commerce, and that the decision of the said Supreme Court of Pennsylvania was against the said claim.

IV. That upon the said argument and hearing the said defendant George Schollenberger specially set up and claimed that the sale of oleomargarine by him for which he was indicted was a sale

of an article of interstate commerce in the original package of commerce and therefore within his rights, privileges and immunities under the Constitution of the United States, and that the decision of the said Supreme Court of Pennsylvania was against the said claim.

In witness whereof, I have hereunto subscribed my name this day of March, one thousand eight hundred and ninety-eight.
March 21, 1898.

JAMES P. STERRETT,
Chief Justice Supreme Court.

I, **CHARLES S. GREENE**, Prothonotary of the Supreme Court of Pennsylvania in and for the Eastern District, do certify that the Honorable **JAMES P. STERRETT**, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now Chief Justice of the Supreme Court of Pennsylvania to whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere and that his signature thereto subscribed is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court of Pennsylvania in and for the Eastern District, at Philadelphia this twenty-first day of March one thousand eight hundred and ninety-eight.

CHAS. S. GREENE,
Prothonotary.

[SEAL]



SUPREME COURT OF THE UNITED STATES

GEORGE A. PAUL PLAINTIFF BY DEED

THE COMMONWEALTH OF PENNSYLVANIA

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

FILED DECEMBER 2, 1902

(18,102.)

105
16
215

(16,102.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 383.

GEORGE E. PAUL, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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1

Petition for Writ of Error.

To the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States of America:

The petition of George E. Paul respectfully sheweth—

That the Commonwealth of Pennsylvania brought suit against your petitioner into the supreme court of Pennsylvania for the eastern district, to July term, 1894, number 105, by an appeal from the judgment of and certiorari to the court of quarter sessions of Philadelphia county, October term, 1893, number 370, in which suit in said supreme court your petitioner was appellee and defendant in said court of quarter sessions and The Commonwealth of Pennsylvania was appellant and plaintiff in said court of quarter sessions.

That your petitioner was criminally indicted by the grand jury of said court of quarter sessions for an alleged violation of a certain act of the General Assembly of the Commonwealth of Pennsylvania of May 21st, 1885, the provisions of which are as follows:

2

“That no person, firm, or corporate body shall manufacture out of any oleaginous substance, or any compound of the same, other than that produced from unadulterated milk or cream from the same, any article designed to take the place of butter or cheese, produced from pure unadulterated milk or cream from the same, or of any imitation or adulterated butter or cheese, nor shall sell or offer for sale or have in his, her, or their possession with intent to sell the same as an article of food.”

That violations of the said act are made a misdemeanor, punished by a fine and imprisonment.

That on November 16th, 1893, the defendant pleaded not guilty in said suit, and on the same day a jury being called found a special verdict embodying the following facts:

That the defendant was the duly authorized agent of Braun & Fitts, of Chicago, Illinois, and as such agent was engaged in business in said city of Philadelphia as a wholesale dealer in oleomargarine and was not engaged in any other business, and as such agent had paid the U. S. internal-revenue tax on the business of a wholesale dealer in oleomargarine under act of Congress of August 2nd, 1886.

That on or before the second day of October, 1893, the said Braun & Fitts shipped from Chicago to said defendant a tub

3

of oleomargarine, containing ten pounds, manufactured by the said Braun & Fitts.

That said package was an original package of such form, size, and weight as is used by producers and shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in the ordinary course of actual commerce, and said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania.

That on the said second day of October, in the said city of Philadelphia, at the place of business aforesaid, the said defendant, as wholesale dealer as aforesaid, sold the said tub or package, the oleomargarine therein contained remaining in the original package, being the same package, with seals, marks, stamps, and brands unbroken, in which it was packed by said manufacturer in the said city of Chicago, Illinois, and thence transported into the city of Philadelphia and delivered by the carrier to the defendant, and the said tub was not broken or opened on the said premises, and as soon as it was purchased it was removed from the said premises.

That there was no attempt or purpose on the part of defendant to sell the article as butter or any understanding on the part
4 of the purchaser that he was buying anything but oleomargarine, and the said oleomargarine is recognized by the act of Congress of August 2nd, 1886, as an article of commerce.

That on April 18th, 1894, the said court of quarter sessions entered a judgment upon the record upon the special verdict for defendant.

That on May 26th, 1894, The Commonwealth of Pennsylvania, plaintiff, sued out a writ of error to the said supreme court of the said State.

That on October 7th, 1895, the supreme court of Pennsylvania ordered the said judgment reversed and entered judgment on the said special verdict in favor of the Commonwealth of Pennsylvania, and said judgment was duly entered and recorded in the eastern district of Pennsylvania.

That said judgment of the said supreme court is a judgment of the highest court of record of the Commonwealth of Pennsylvania.

That said judgment of the said court is final.

That the right, title, privilege, and immunity claimed by your petitioner, defendant and appellee aforesaid, were claimed under the Constitution of the United States of America, art. I, sect. 8, providing, among other things, that Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

That the decision and judgment of the supreme court of Pennsylvania aforesaid was against the right, title, privilege, and immunity so claimed.

5 That said act of the General Assembly of the Commonwealth of Pennsylvania of May 21st, 1885, was and is null and void so far as it attempts to prohibit the sale of an article of commerce in the original package of commerce in the interstate commerce of the States, and therefore the said judgment of the said supreme court is null and void and contrary to the Constitution and statute laws of the United States of America in the premises.

Your petitioner therefore prays for the allowance of a writ of error to the supreme court of Pennsylvania for the eastern district in order that said judgment of the supreme court of Pennsylvania

may be re-examined and reversed or affirmed in the Supreme Court of the United States of America.

And he will ever pray.

GEORGE E. PAUL.

George E. Paul, being duly sworn according to law, deposes and says that the facts set forth in the above petition are true to the best of his knowledge and belief.

GEORGE E. PAUL.

Sworn and subscribed before me this 14th day of October, 1895.

SAMUEL BELL,
*Commissioner Circuit Court U. S.,
Eastern District of Pennsylvania.*

And now, to wit, October 15th, 1895, citation awarded and writ of error allowed by me. Bond to be given in a penalty of \$200.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

True copy.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk C. C. U. S., E. D. of Pa.

5½ [Endorsed:] 105. July term, 1894, S. C. Pa. Commonwealth of Pennsylvania v. George E. Paul. Petition for citation. Writ of error. H. R. Edmunds, for petitioner.

6 THE UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the chief justice and associate justices of the supreme court of the Commonwealth of Pennsylvania, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said Commonwealth in which a decision could be had in the said suit between the Commonwealth of Pennsylvania and George E. Paul, July term, 1894, No. 105, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said Commonwealth, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privileges, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commis-

sion, a manifest error hath happened, to the great damage of the said George E. Paul, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the sixteenth day of October, in the year of our Lord one thousand eight hundred and ninety-five.

SAMUEL BELL,

*Clerk Circuit Court United States,
Eastern District of Pennsylvania.*

[Endorsed:] Supreme court of Pennsylvania, eastern district, July term, 1894. No. 105. George E. Paul vs. Commonwealth of Pennsylvania. Writ of error. Filed Oct. 18, 1895, in supreme court.

8 UNITED STATES OF AMERICA, ss:

To the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden within thirty days at Washington, pursuant to a writ of error filed in the prothonotary's office of the supreme court of Pennsylvania for the eastern district, wherein George E. Paul is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville Weston Fuller, Chief Justice of the Supreme Court of the United States, this eighteenth day of October, 1895.

GEORGE SHIRAS, JR.,

Associate Justice of the Supreme Court of the United States.

Service accepted.

GEO. S. GRAHAM, *Dist. Att'y.*

Oct. 29, '95.

8½ [Endorsed:] Supreme court of Pennsylvania. 105. July term, 1894. Commonwealth of Pennsylvania vs. George E. Paul. Copy of citation.

9 In the Supreme Court of Pennsylvania in and for the Eastern District of Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA }
 vs. } July Term, 1894. No. 105.
 GEORGE E. PAUL. }

Know all men by these presents that we, George E. Paul and Samuel Baillie, are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of two hundred dollars, to be paid to the said The Commonwealth of Pennsylvania, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 16th day of October, 1895.

Whereas lately, at a term of the supreme court of Pennsylvania in and for the eastern district of Pennsylvania, in a suit depending in said court between The Commonwealth of Pennsylvania, appellant, and George E. Paul, appellee, judgment was rendered against the said appellee, and the said appellee having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Commonwealth of Pennsylvania, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said George E. Paul, appellant in said Supreme Court of the United States, shall prosecute his writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

GEO. E. PAUL. [SEAL.]
 SAMUEL BAILLIE. [SEAL.]

Sealed & delivered in the presence of us—

JOHN RODGERS.
 HARRY S. FINCH.

I approve of the above bond on behalf of the Commonwealth of Pennsylvania.

GEO. S. GRAHAM,
District Attorney,
 Per THOMAS W. BARLOW,
Ass't Dist. Attorney.

The above bond approved Oct. 18, '95.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

I hereby certify that the above is a true and correct copy of the bond filed in above-entitled case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this 23rd day of October, A. D. 1895.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,

Prothonotary.

10½ [Endorsed:] Supreme court of Pennsylvania. 105. July term, 1894. Commonwealth of Pennsylvania. Copy of bond.

11 In the Supreme Court of Pennsylvania in and for the Eastern District.

Among the records and proceedings of the supreme court of Pennsylvania in and for the eastern district the following is thus contained :

Docket Entries.

COMMONWEALTH OF PENNSYLVANIA,	} No. 105. July Term, 1894.
Plaintiff,	
vs.	
GEORGE E. PAUL, Defendant.	

A. Morton Cooper, Carroll R. Williams, George S. Graham, district attorney. 105.

Appeal of plaintiff from the court of quarter sessions of the county of Philadelphia filed May 26, 1894.

Eo die, certiorari exit, returnable the first Monday of January, 1895.

December 27, 1894—Record returned and filed.

January 7, 1895—Assignments of error filed.

January 18, 1895—Argued.

12 October 7th, 1895—The judgment is reversed and judgment entered in favor of the Commonwealth on the special verdict.

The record is remitted for purposes of sentence and execution.

Opinion by Williams, J.

October 18, 1895—Copy of petition for writ of error to the Supreme Court of the United States brought into office.

Eo die, writ of error brought into office.

Eo die, copy of citation brought into office.

Bond filed.

October 29, 1895—Copy of acceptance and service of citation brought into office.

I hereby certify that the above and foregoing is a true and correct copy of the docket entries in the above-entitled case so full and entire as appears of record in our said supreme court.

Seal of the Supreme Court
of Pennsylvania, Eastern
District, 1776.

In testimony whereof I have hereunto set my hand and seal of said court, at Philadelphia, this 23rd day of Oct., A. D. 1895.

CHAS. S. GREENE,

Prothonotary.

Appeal and Affidavit.

In the Supreme Court of Pennsylvania for the Eastern District.

13

(*Appeal and Affidavit.*)

Court of Quarter Sessions of the County of Philadelphia, October Term, 1893.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff, Appellant, }
vs. } No. 370.
 GEORGE E. PAUL, Defendant, Appellee, }

Enter appeal on behalf of the Commonwealth of Pennsylvania from the judgment of the court of quarter sessions of the county of Philadelphia entered in the above case on April 18th, 1894.

A. MORTON COOPER,
 CARROLL R. WILLIAMS,
 GEORGE S. GRAHAM, *District Attorney,*
Attorneys for Plaintiff.

To Charles S. Greene, proth'y sup. ct., E. D.

COUNTY OF PHILADELPHIA, ss :

Eastburn Reeder, being duly affirmed, saith that the above appeal is not intended for delay.

EASTBURN REEDER.

Affirmed and subscribed this 15th day May, A. D. 1894.

CHARLES S. GREENE,
Prothonotary.

Endorsement: No. 105. July term, 1894, supreme court of Pennsylvania, eastern district. Commonwealth, appellant, *v.* George E. Paul. Appeal and affidavit. Filed May 26, 1894, in supreme court. A. Morton Cooper, Carroll R. Williams, George S. Graham, district attorney.

14

Precipe for Certiorari.

In the Supreme Court of Pennsylvania for the Eastern District.

COMMONWEALTH OF PENNSYLVANIA, } No. 370. Certiorari to the
 Plaintiff, Appellant, } Court of Quarter Sessions
vs. } of the County of Phila-
 GEORGE E. PAUL, Defendant, Ap- } delphia, of October Term,
 pellee. } 1893.

Issue certiorari to the court of quarter sessions of the county of Philadelphia to bring up record and proceedings in a certain action

in said court, No. 370, October term, 1893, wherein Commonwealth of Pennsylvania — plaintiff and George E. Paul is defendant.

Returnable to next term *sec. reg.*

A. MORTON COOPER,
CARROLL R. WILLIAMS,
GEORGE S. GRAHAM, *District Attorney,*
Attorneys for Plaintiff, Appellant.

To Charles S. Greene, proth'y sup. ct., E. D.

Endorsement: No. 105. July term, 1894, supreme court of Pennsylvania, eastern district. Com'th. appellant, *vs.* George E. Paul. Precipe for certiorari. A. Morton Cooper, Carroll R. Williams, George S. Graham, district attorney. Filed May 26, 1894, in supreme court.

15

Writ of Certiorari.

EASTERN DISTRICT OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss.*

The Commonwealth of Pennsylvania to the justices of the court of quarter sessions for the county of Philadelphia, Greeting:

We, being willing for certain causes to be certified of the matter of the appeal of Commonwealth of Pennsylvania from the judgment in No. 370, October sessions, 1893, wherein the said appellant was plaintiff and George E. Paul was defendant—

Judgment entered in the above case on April 18, 1894, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the first Monday of January next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the
[SEAL.] twenty-sixth day of May, in the year of our Lord one thousand eight hundred and ninety-four.

CHARLES S. GREENE,

Prothonotary.

16

Endorsement: 370. October sess., 1893. Q. S. Philadelphia. No. 105. July term, 1894, Supreme court. Commonwealth of Pennsylvania, appellant, *vs.* George E. Paul. Certiorari to the court of quarter sessions for the county of Philadelphia, returnable the first Monday of January, 1895. Rule on the appellee to appear and plead on the return day of the writ. Brought into office May 26, 1894. A. Morton Cooper, Carroll R. Williams, George S. Graham, district attorney.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

J. I. CLARK HARE. [L. s.]

Filed Dec. 27, 1894, in supreme court.

True Bill.

CITY AND COUNTY OF PHILADELPHIA, ss:

In the Court of Quarter Sessions of the Peace for the City and County of Philadelphia, October Sessions, 1893.

The grand inquest of the Commonwealth of Pennsylvania inquiring for the city and county of Philadelphia upon their respective oaths and affirmations do present that George E. Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully sell as an article of food a certain article manufactured out of some oleaginous substance and compound
17 of the same other than that produced from unadulterated milk and cream from the same, the said article being designed to take the place of butter produced from pure, unadulterated milk and cream from the same, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said George E. Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully sell as an article of food a certain substance in imitation of butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their respective oaths and affirmations aforesaid do further present that the said George E. Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully sell an article of food, adulterated butter, contrary to the form of the act of the General
18 Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said George E. Paul, late

of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully offer for sale as an article of food a certain article manufactured out of some oleaginous substance and compound of the same other than that produced from unadulterated milk and cream from the same, the said article being designed to take the place of butter produced from pure, unadulterated milk and cream from the same, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said George E. Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court,

19 did then and there unlawfully offer for sale as an article of food a certain article in imitation of butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said George E. Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully offer for sale as an article of food adulterated butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their respective oaths and affirmations aforesaid do further present that the said George E. Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there have in his possession, with intent

20 to sell as an article of food, a certain article manufactured out of some oleaginous substance and compound of the same other than that produced from unadulterated milk and cream from the same, the said article being designed to take the place of butter produced from pure, unadulterated milk and cream from the same, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations do further present that the said George E. Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully have in his possession, with intent to sell as an article of food, a certain substance in imitation of butter, con-

trary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said George E. Paul, late of the said county, yeoman, on the second day of October, 21 in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully have in his possession, with intent to sell as an article of food, adulterated butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

GEORGE S. GRAHAM,

District Attorney.

Endorsement: Witnesses: Evan R. Penrose, P. O. bldg., Phila., Pa.; Jas. E. Crawford, E. F. Donnelly, Maggie Donnelly, W. J. Sloan, A. K. Cassel, 1326 Chestnut street, Phila. Pa.; Dr. William Beam, Dr. Henry Leffmann, 715 Walnut St., Phila. Pa. 10, 1893, bail, \$500, to October term, '93. J. Otis Paul, No. 451 York Ave., 12th ward. District attorney. 11, 3, 1893, recognizance of defendant and surety forfeited. No. 370, October sessions, 1893. Commonwealth *vs.* George E. Paul, 214 Callowhill St. Selling imitation butter, having the same in possession with intent to sell as an article of food. True bill. C. A. Porter, foreman. Oct. 16, 1893. 11, 16, '93, the defendant, being arraigned, plead not guilty. Dist. att'y *sim. et issue.*

Verdict, — —, 189—.

Sentence, —.

COMMONWEALTH OF PENNSYLVANIA }

vs.

GEORGE E. PAUL. }

Special Verdict.

The jury find the following facts:

22 (1.) The defendant, George E. Paul, is a resident and citizen of the Commonwealth of Pennsylvania and is the duly authorized agent in the city of Philadelphia of Braun and Fitts, of Chicago, Illinois.

(2.) The said Braun and Fitts are engaged in the manufacture of oleomargarine in the said city of Chicago and State of Illinois, and as such manufacturers have complied with all the provisions of the act of Congress of August 2nd, 1886, entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine."

(3.) The said defendant as agent aforesaid is engaged in business at 214 Callowhill street, in the city of Philadelphia, as wholesale

dealer in oleomargarine, and was so engaged on the second day of October, 1893.

(4.) The said defendant, on the first day of July, 1893, paid to the collector of internal revenue of the first district of Pennsylvania the sum of four hundred and eighty dollars as and for a special tax upon the business as agent for Braun and Fitts Company in oleomargarine, and obtained from said collector a writing in the words following:

Stamp for
\$480
per year.
No. A 431.

United States
internal revenue.

Special tax,
\$480
per year.
No. a 431.

Received from J. Otis Paul & George E. Paul, agents for the Chicago Butterine Co., the sum of four hundred and eighty
23 dollars for special tax on the business of wholesale dealer in oleomargarine, to be carried on at No. 214 Callowhill street, Philadelphia, State of Pennsylvania, for the period represented by the coupon or coupons hereto attached.

Dated at Philadelphia, Pa., July 1st, 1893.

[SEAL.]

\$480.

WILLIAM H. DOYLE,

Collector, First District of Pennsylvania.

The following clauses appear on the margin of the above:

This stamp is simply a receipt for a tax due the Government and does not exempt the holder from any penalty or punishment provided for by the law of any State for carrying on the said business within such State and does not authorize the commencement nor the continuance of such business contrary to the laws of such State or in places prohibited by a municipal law. See section 3243, Revised Statutes U. S.

Severe penalties are imposed for neglect or refusal to place and keep this stamp conspicuously in your establishment or place of business. Act of August 2nd, 1886.

Attached to this were coupons for each month of the year in form as follows:

Coupon for special tax on wholesale dealer in oleomargarine for October, 1893.

(5.) On or before the said second day of October, 1893, the
24 said Braun & Fitts shipped to the said defendant, their agent aforesaid at their place of business in Philadelphia, a package of oleomargarine separate and apart from all other packages, being a tub thereof, containing ten pounds, packed, sealed, marked, stamped, and branded in accordance with the requirements of the said act of Congress of August second, 1886. The said package was an original package, as required by the said act, and was of such form, size, and weight as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in the ordinary course of actual commerce, and the said form, size, and weight were

adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania, said package being one of a number of similar packages forming one consignment shipped by the said company to the said defendant. Said packages forming said consignment were unloaded from the cars and placed in defendant's store and there offered for sale as an article of food.

(6.) On the said second day of October, 1893, in the said city of Philadelphia, at the place of business aforesaid, the said defendant, as wholesale dealer aforesaid, sold to James E. Crawford the said tub or package mentioned in the foregoing paragraph, the oleomargarine therein contained remaining in the original package, being the same package, with seals, marks, stamps, and brands unbroken, in which it was packed by the said manufacturer in the
 25 said city of Chicago, Illinois, and thence transported into the city of Philadelphia and delivered by the carrier to the defendant; and the said tub was not broken nor opened on the said premises of the said defendant, and as soon as it was purchased by the said James E. Crawford it was removed from the said premises.

(7.) The oleomargarine contained in said tub was manufactured out of an oleaginous substance not produced from unadulterated milk or cream and was an article designed to take the place of butter, and sold by the defendant to James E. Crawford as an article of food, but the fact that the article was oleomargarine and not butter was made known by the defendant to the purchaser and there was no attempt or purpose on the part of the defendant to sell the article as butter or any understanding on the part of the purchaser that he was buying anything but oleomargarine, and the said oleomargarine is recognized by the said act of Congress of August 2nd, 1886, as an article of commerce.

(8.) The above transaction specifically found by the jury is one of many transactions of like character made by the defendant during the last two years.

Endorsement: Court of quarter sessions, 1893. No. 370. Commonwealth vs. George E. Paul. Special verdict. November 16, 1893. Special verdict of jury finding the facts as within stated.

October Sessions, 1893.

COM.	}	370. Selling Imitation Butter. True Bill.
vs.		
GEORGE E. PAUL.		

26 Having the same in possession with intent to sell as an article of food.

November 16th, 1893.—Present: Hon. J. I. Clark Hare; defendant present, and, being arraigned, pleads not guilty.

District attorney *sim et* issue.

Same day, defendant present is put upon trial. A jury, being called, answer, appear, and are chosen as follows: Edward Hanley,

Michael J. Hayden, Samuel Cress, Thos. Wolf, Frank Rantz, Jno. Hablutzel, Harry Boyer, Samuel Strang, Harry M. White, Jno. Burkinire, A. Stevens, Matthew Haas, who were all duly empanelled, sworn, or affirmed, and, being charged by the court, do find that—

(1.) The defendant, George E. Paul, is a resident and citizen of the Commonwealth of Pennsylvania, and is the duly authorized agent in the city of Philadelphia of Braun and Fitts, of Chicago, Illinois.

(2.) The said Braun and Fitts are engaged in the manufacture of oleomargarine in the said city of Chicago and State of Illinois, and as such manufacturers have complied with all the provisions of the act of Congress of August 2nd, 1886, entitled "An act defining butter; also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine."

(3.) The said defendant, as agent aforesaid, is engaged in business at No. 214 Callowhill street, in the city of Philadelphia, as wholesale dealer in oleomargarine, and was so engaged on the second day of October, 1893.

(4.) The said defendant, on the first day of July, 1893, paid 27 to the collector of internal revenue of the first district of Pennsylvania the sum of four hundred and eighty dollars as and for a special tax upon the business as agent for Braun & Fitts Company in oleomargarine, and obtained from said collector a writing in the words following:

Stamp for		Special tax,
\$480	United States	\$480
per year.	internal revenue.	per year.
No. A. 431.		No. A. 431.

Received from J. Otis Paul & George E. Paul, agents for the Chicago Butterine Co., the sum of four hundred and eighty dollars for special tax on the business of wholesale dealer in oleomargarine, to be carried on at No. 214 Callowhill street, Philadelphia, State of Pennsylvania, for the period represented by the coupon or coupons hereto attached.

Dated at Philadelphia, Pa., July 1st, 1893.

[SEAL.]

\$480.

WILLIAM H. DOYLE,

Collector, First District of Pennsylvania.

The following clauses appear on the margin of the above: This stamp is simply a receipt for a tax due the Government, and does not exempt the holder from any penalty or punishment provided for by the law of any State for carrying on the said business within such State, and does not authorize the commencement nor the continuance of such business contrary to the laws of such State or places prohibited by a municipal law. See section 3243, Revised Statutes U. S. Severe penalties are imposed for neglect or refusal to place and keep this stamp conspicuously in your establishment or place of business. Act of August 2nd, 1886.

Attached to this were coupons for each month of the year in form as follows: Coupon for special tax on wholesale dealer in oleomargarine for October, 1893.

(5.) On or before the said second day of October, 1893, the said Braun & Fitts shipped to the said defendant, their agent aforesaid, at their place of business in Philadelphia, a package of oleomargarine, separate and apart from all other packages, being a tub thereof, containing ten pounds, packed, sealed, marked, stamped, and branded in accordance with the requirements of the said act of Congress of August second, 1886. The said package was an original package as required by said act, and was of such form, size, and weight as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in ordinary course of actual commerce, and said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania, the said package being one of a number of similar packages forming one consignment shipped by the said company to the said defendant. Said packages forming said consignment were unloaded from the cars and placed in defendant's store and there offered for sale as an article of food.

(6.) On the said second day of October, 1893, in the said city of Philadelphia, at the place of business aforesaid, the said
29 defendant, as wholesale dealer aforesaid, sold to James E. Crawford the said tub or package mentioned in the foregoing paragraph, the oleomargarine therein contained remaining in the original package being the same package, with seals, marks, stamps, and brands unbroken in which it was packed by the said manufacturer in the said city of Chicago, Illinois, and thence transported into the city of Philadelphia and delivered by the carrier to the defendant, and the said tub was not broken nor opened on the said premises of the said defendant, and as soon as it was purchased by the said James E. Crawford it was removed from the said premises.

(7.) The oleomargarine contained in said tub was manufactured out of an oleomargarine substance not produced from unadulterated milk or cream, and was an article designed to take the place of butter and sold by the defendant to James E. Crawford as an article of food; but the fact that the article was oleomargarine and not butter was made known by the defendant to the purchaser and there was no attempt or purpose on the part of the defendant to sell the article as butter or any understanding on the part of the purchaser that he was buying anything but oleomargarine, and the said oleomargarine is recognized by the said act of Congress of August 2nd, 1886, as an article of commerce.

(8.) The above transaction specifically found by the jury is one of many transactions of like character made by the defendant during the last two years.

30 Whereupon the district attorney, on behalf of the Commonwealth, moves the court for judgment upon the verdict in favor of the Commonwealth and against the defendant.

November 27th, 1893—present, Hon. J. I. C. Hare—motion for judgment argued and held under advisement.

April 18th, 1894—present, Hon. J. I. Clark Hare—judgment entered for the defendant upon the special verdict.

May 26th, 1894, certiorari brought into office.

Assignments of Error.

Supreme Court for Eastern District, July Term, 1894.

COMMONWEALTH OF PENNSYLVANIA, Appellant,

vs.

GEORGE E. PAUL, Defendant Below and Appellee.

} No. 105.

Appeal by plaintiff from the judgment of and certiorari to the court of quarter sessions of Philadelphia county, October term, 1893, No. 370.

The Commonwealth in the above case assigns as error:

1. The court erred in entering judgment for the defendant on the special verdict.

2. The court erred in not entering judgment for the plaintiff on the special verdict.

A. MORTON COOPER,

CARROLL R. WILLIAMS,

GEO. S. GRAHAM,

Per C. R. W., *District Attorney,*

Attorneys for Commonwealth.

31 Endorsement: No. 105. July term, 1894. Supreme court, eastern district. Com. of Penna., appellant, *vs.* Geo. E. Paul. Assignments of error. A. Morton Cooper, Carroll R. Williams. Geo. S. Graham, dist. att'y, for Commonwealth. Filed Jan. 7, 1895, in supreme court.

Opinion of the Supreme Court of Pennsylvania.

COMMONWEALTH, App't,

vs.

GEORGE E. PAUL.

} Appeal from the Judgment of the Court of Quarter Sessions of the Peace of Phila. County. 105. July Term, 1894.

WILLIAMS, J.:

The questions raised in this case are identical with those just disposed of in *Commonwealth vs. J. Otis Paul*, in which an opinion is this day filed.

For reasons there stated, the judgment is reversed and judgment entered in favor of the Commonwealth on the special verdict.

The record is remitted for purposes of sentence and execution.

Endorsement: 105. July term, 1894. Commonwealth, app't, *v.* George E. Paul. Appeal from the judgment of the quarter sessions of Phila. county. 17 Jan'y, '95. Rev'd. Mem.: To follow Com'th *v.* J. O. Paul. Filed Oct. 7th, 1895, in supreme court. Williams.

I hereby certify that the above and foregoing is a true and correct copy of the opinion in the above-entitled case, so full and entire as appears of record in our said supreme court.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776. 32 In testimony whereof I have hereunto set my hand and seal of said court, at Philadelphia, this twenty-third day of October, A. D. 1895.
CHAS. S. GREENE,
Prothonotary.

33 UNITED STATES OF AMERICA, } ss :
State of Pennsylvania,

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages 1 to 32, inclusive, is a true and faithful copy of the record and proceedings of the supreme court of the State of Pennsylvania, eastern district, in a certain suit therein pending wherein Commonwealth of Pennsylvania was appellant and George E. Paul was appellee.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court of the State of Pennsylvania, eastern district, at Philadelphia, the 12th day of November, 1895, and in the one hundred and twentieth year of the Independence of the United States.

CHAS. S. GREENE,
Prothonotary of the Supreme Court of Pennsylvania, Eastern District.

34 I, James P. Sterrett, chief justice of the supreme court of Pennsylvania, do hereby certify that Charles S. Greene was at the time of signing the annexed attestation and now is prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this 12th day of November, one thousand eight hundred and ninety-five.

JAMES P. STERRETT,
Chief Justice Sup. Court.

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable James P. Sterrett, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania in and for the eastern district, at Philadelphia, this 12th day of November, one thousand eight hundred and ninety-five.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

35 Supreme Court of U. S., Oct. Term, 1895.

GEORGE E. PAUL, Plaintiff in Error,	} No. 812.
v.	
THE COMMONWEALTH OF PENNSYLVANIA.	

Assignments of Error.

1st. The court erred in reversing the judgment of the court of quarter sessions entered upon the findings of fact of the special jury and in entering judgment for the Commonwealth of Pennsylvania.

2nd. The court erred in not affirming the judgment of the court of quarter sessions upon the findings of fact of the special verdict.

3rd. The court erred in failing to hold the act of 21st of May, 1885, null and void, in so far as it attempted to prohibit the sale of an article of interstate commerce in the original package of commerce.

4th. The court erred in holding that the sale by the defendant below was not a sale of an article of interstate commerce in the original package of commerce.

5th. The court erred in assuming that the sale by the defendant below was at retail; the special verdict found that the defendant below was a wholesale dealer.

6th. The court erred in apparently holding that, in the absence of any legislation in Pennsylvania with reference to the sale of oleomargarine by retail or by wholesale, a sale by retail would be void, although a sale by wholesale would be valid under the interstate-commerce law.

36 7th. The court erred in assuming that the sale by the defendant below was a sale to a consumer. The facts found by the special verdict were, "the said defendant, as wholesale dealer aforesaid, sold the said tub or package mentioned," without any finding as to the occupation of the purchaser.

8th. The court erred in holding, as it apparently did, that a sale to a consumer of an article of interstate commerce is not protected by art. 1, sec. 8, of the National Constitution, even though such sale was a sale in the original package of commerce.

9th. The court erred in holding that the sale by the defendant below was a sale of "a package devised by a non-resident manufacturer or put up by him adapted for sale at retail to individual consumers." The findings of fact of the special verdict were the said package "was of such form, size, and weight as is used by

producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandise in the ordinary course of actual commerce."

10th. The court erred in holding that the package sold by the defendant below was devised by the manufacturer of such form and size as to evade the laws of the State. The findings of the special verdict were, "the said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania."

A. B. RONEY,

R. C. DALE,

H. R. EDMUNDS,

Counsel for Plaintiff in Error.

Endorsed on cover: Case No. 16,102. Pennsylvania supreme court. Term No., 383. George E. Paul, plaintiff in error, vs. The Commonwealth of Pennsylvania. Filed December 5th, 1895.



**IN THE SUPREME COURT OF PENNSYLVANIA
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.**

JULY TERM, 1894.

COMMONWEALTH OF PENNSYLVANIA

VS.

**GEORGE E. PAUL,
Defendant below and Appellee.**

No. 105.

Appeal by plaintiff from the judgment of the Court of Quarter Sessions of Philadelphia County.

I, JAMES P. STERRETT, Chief Justice of the Supreme Court of Pennsylvania at the present time and upon the argument and hearing of the above entitled appeal, do hereby certify :

I. That upon the said argument and hearing the validity of the statute of Pennsylvania of May 21, 1885, was drawn in question by the said defendant George E. Paul on the ground of its being repugnant to section 8 of Article I of the Constitution of the United States, and that the decision of the said Supreme Court of Pennsylvania was in favor of the validity of the said statute.

II. That upon the said argument and hearing the said defendant George E. Paul specially set up and claimed the right; privilege and immunity under the said section 8 of Article I of the Constitution of the United States of selling an article of interstate commerce, and that the decision of the said Supreme Court of Pennsylvania was against the said right, privilege and immunity so set up and claimed as aforesaid.

III. That upon the said argument and hearing the said defendant George E. Paul specially set up and claimed that the said statute of Pennsylvania of May 21, 1885, was null and void under the Constitution of the United States in so far as it attempted to prohibit the sale of an article of interstate commerce in the original packages of commerce, and that the decision of the said Supreme Court of Pennsylvania was against the said claim.

IV. That upon the said argument and hearing, the said defendant George E. Paul specially set up and claimed that the sale of oleomargarine by him for which he was indicted was a sale of an article of interstate commerce in the original package of commerce and therefore within his rights, privileges and immunities under the Constitution of the United States, and that the decision of the said Supreme Court of Pennsylvania was against the said claim.

In witness whereof, I have hereunto subscribed my name this day of March, one thousand eight hundred and ninety-eight.

JAMES P. STERRETT,
Chief Justice Supreme Court.

March 21, 1898.

I, CHARLES S. GREENE, Prothonotary of the Supreme Court of Pennsylvania in and for the Eastern District, do certify that the Honorable JAMES P. STERRETT, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now Chief Justice of the Supreme Court of Pennsylvania to whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere and that his signature thereto subscribed is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court of Pennsylvania in and for the Eastern District, at Philadelphia this twenty-first day of March one thousand eight hundred and ninety-eight.

CHAS. S. GREENE,
Prothonotary.

[SEAL.]

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1896.

No. 304. *JP.*

J. OTIS PAUL, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED DECEMBER 3, 1896.

(16,103.)

155
15

(16,103.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 384.

J. OTIS PAUL, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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1

Petition for Writ of Error.

To the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States of America:

The petition of J. Otis Paul respectfully sheweth—

That the Commonwealth of Pennsylvania brought suit against your petitioner into the supreme court of Pennsylvania for the eastern district, to July term, 1894, number 106, by an appeal from the judgment of and certiorari to the court of quarter sessions of Philadelphia county, October term, 1893, number 372, in which suit in said supreme court your petitioner was appellee and defendant in said court of quarter sessions and The Commonwealth of Pennsylvania was appellant and plaintiff in said court of quarter sessions.

That your petitioner was criminally indicted by the grand jury of said court of quarter sessions for an alleged violation of a certain act of the General Assembly of the Commonwealth of Pennsylvania of May 21st, 1885, the provisions of which are as follows:

2 "That no person, firm, or corporate body shall manufacture out of any oleaginous substance or any compound of the same, other than that produced from unadulterated milk or cream from the same, any article designed to take the place of butter or cheese produced from pure unadulterated milk, or cream from the same, or of any imitation or adulterated butter or cheese, nor shall sell or offer for sale or have in his, her, or their possession with intent to sell the same as an article of food."

That violations of the said act are made a misdemeanor, punished by a fine and imprisonment.

That on November 16th, 1893, the defendant pleaded not guilty in said suit, and on the same day a jury being called found a special verdict embodying the following facts:

That the defendant was the duly authorized agent of Braun & Fitts, of Chicago, Illinois, and as such agent was engaged in business in said city of Philadelphia as a wholesale dealer in oleomargarine and was not engaged in any other business, and as such agent had paid the U. S. internal-revenue tax on the business of a wholesale dealer in oleomargarine under act of Congress of August 2nd, 1886.

3 That on or before the second day of October, 1893, the — Braun & Fitts shipped from Chicago to said defendant a tub of oleomargarine, containing ten pounds, manufactured by the said Braun & Fitts.

That said package was an original package of such form, size, and weight as is used by producers and shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in the ordinary course of actual commerce, and said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania.

That on the said second day of October, in the said city of Philadelphia, at the place of business aforesaid, the said defendant, as wholesale dealer as aforesaid, sold the said tub or package, the oleomargarine therein contained remaining in the original package, being the same package, with seals, marks, stamps, and brands unbroken, in which it was packed by said manufacturer in the said city of Chicago, Illinois, and thence transported into the city of Philadelphia and delivered by the carrier to the defendant, and the said tub was not broken or opened on the said premises, and as soon as it was purchased it was removed from the said premises.

That there was no attempt or purpose on the part of defendant to sell the article as butter or any understanding on the part
4 of the purchaser that he was buying anything but oleomargarine, and the said oleomargarine is recognized by the act of Congress of August 2nd, 1886, as an article of commerce.

That on April 18th, 1894, the said court of quarter sessions entered a judgment upon the record upon the special verdict for defendant.

That on May 26th, 1894, The Commonwealth of Pennsylvania, plaintiff, sued out a writ of error to the said supreme court of the said State.

That on October 7th, 1895, the supreme court of Pennsylvania ordered the said judgment reversed and entered judgment on the said special verdict in favor of the Commonwealth of Pennsylvania, and said judgment was duly entered and recorded in the eastern district of Pennsylvania.

That said judgment of the said supreme court is a judgment of the highest court of record of the Commonwealth of Pennsylvania.

That said judgment of the said court is final.

That the right, title, privilege, and immunity claimed by your petitioner, defendant and appellee aforesaid, were claimed under the Constitution of the United States of America, art. I, sect. 8, providing, among other things, that Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

That the decision and judgment of the supreme court of Pennsylvania aforesaid was against the right, title, privilege, and immunity so claimed.

5 That said act of the General Assembly of the Commonwealth of Pennsylvania of May 21st, 1885, was and is null and void so far as it attempts to prohibit the sale of an article of commerce in the original package of commerce in the interstate commerce of the States, and therefore the said judgment of the said supreme court is null and void and contrary to the Constitution and statute laws of the United States of America in the premises.

Your petitioner therefore prays for the allowance of a writ of error to the supreme court of Pennsylvania for the eastern district in order that said judgment of the supreme court of Pennsylvania may be re-examined and reversed or affirmed in the Supreme Court of the United States of America.

And he will ever pray.

J. OTIS PAUL.

J. Otis Paul, being duly sworn according to law, deposes and says that the facts set forth in the above petition are true to the best of his knowledge and belief.

J. OTIS PAUL.

Sworn and subscribed before me this 14th day of October, 1895.

SAMUEL BELL,
*Commissioner Circuit Court U. S.,
Eastern District of Pennsylvania.*

And now, to wit, October 15th, 1895, citation awarded and writ of error allowed by me; bond to be given in a penalty of \$200.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

True copy.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk C. C. U. S., E. D. of Pa.

5½ [Endorsed:] 106. July term, 1894, S. C. Pa. Common'th of Pennsylvania v. J. Otis Paul. Petition for citation. Writ of error. H. R. Edmunds, for petitioner.

6 THE UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the chief justice and associate justices of the supreme court of the Commonwealth of Pennsylvania, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said Commonwealth in which a decision could be had in the said suit between the Commonwealth of Pennsylvania and J. Otis Paul, July term, 1894, No. 106, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said Commonwealth, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United

7 States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said J. Otis Paul, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal,

distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the sixteenth day of October, in the year of our Lord one thousand eight hundred and ninety-five.

Seal U. S. Circuit Court,
E. D. Pennsylvania.

SAMUEL BELL,
*Clerk Circuit Court United States,
Eastern District of Pennsylvania.*

7½ [Endorsed:] Supreme court of Pennsylvania, eastern district, July term, 1894. No. 106. J. Otis Paul vs. Commonwealth of Pennsylvania. Writ of error. Filed Oct. 18, 1895, in supreme court.

8 UNITED STATES OF AMERICA, ss:

To the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden within thirty days, at Washington, pursuant to a writ of error filed in the prothonotary's office of the supreme court of Pennsylvania for the eastern district, wherein J. Otis Paul is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville Weston Fuller, Chief Justice of the Supreme Court of the United States, this eighteenth day of October, 1895.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

Service accepted.

GEO. S. GRAHAM, *Dist. Att'y.*

Oct. 29, '95.

8½ [Endorsed:] Supreme court of Pennsylvania. 106. July term, 1894. Commonwealth of Pennsylvania. Copy of citation.

9 In the Supreme Court of Pennsylvania in and for the Eastern District of Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA }
 vs. } July Term, 1894. No. 106.
 J. OTIS PAUL.

Know all men by these presents that we, J. Otis Paul and Samuel Bailie, are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of two hundred dollars, to be paid to the said The Commonwealth of Pennsylvania, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 16th day of October, 1895.

Whereas lately, at a term of the supreme court of Pennsylvania in and for the eastern district of Pennsylvania, in a suit depending in said court between The Commonwealth of Pennsylvania, appellant, and J. Otis Paul, appellee, judgment was rendered against the said appellee, and the said appellee having obtained a
 10 writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Commonwealth of Pennsylvania, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said J. Otis Paul, appellant in said Supreme Court of the United States, shall prosecute his writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

J. OTIS PAUL. [SEAL.]
 SAMUEL BAILIE. [SEAL.]

Sealed & delivered in the presence of us—
 JOHN RODGERS.
 HARRY S. FINCH.

I approve of the above bond on behalf of the Commonwealth of Pennsylvania.

GEO. S. GRAHAM,
District Attorney,
 Per THOMAS W. BARLOW,
Ass't Dist. Att'y.

The above bond approved Oct. 18, '95.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the U. States.

I hereby certify that the above is a true and correct copy of the bond filed in above-entitled case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this 23rd day of October, A. D. 1895.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

10½ [Endorsed:] Supreme court of Pennsylvania. 106. July term, 1894. Commonwealth of Pennsylvania vs. J. Otis Paul. Copy of bond.

11 In the Supreme Court of Pennsylvania in and for the Eastern District.

Among the records and proceedings of the supreme court of Pennsylvania in and for the eastern district the following is thus contained:

Docket Entries.

COMMONWEALTH OF PENNSYLVANIA,	}	No. 106. July Term, 1894.
Plaintiff,		
vs.		
J. OTIS PAUL, Defendant.		

A. Morton Cooper, Carroll R. Williams; George S. Graham, district attorney. 106.

Appeal of plaintiff from the court of quarter sessions of the county of Philadelphia filed May 26, 1894.

Eo die, certiorari exit, returnable the first Monday of January, 1895.

December 27, 1894—Record returned and filed.

January 7, 1895—Assignments of error filed.

January 18th, 1895—Argued.

October 7, 1895—The judgment is reversed and judgment is now entered on the special verdict in favor of the Commonwealth. The record is remitted that sentence may be imposed according to law.

Opinion by Williams, J.

12 October 18, 1895—Copy of petition for writ of error to the Supreme Court of the United States brought into office.

Eo die, writ of error brought into office.

Eo die, copy of citation brought into office.

Bond filed.

October 29, 1895—Copy of acceptance of service of citation brought into office.

I hereby certify that the above and foregoing is a true and correct copy of the docket entries in the above-entitled case so full and entire as appears of record in our said supreme court.

In testimony whereof I have here-
 Seal of the Supreme Court unto set my hand and seal of said
 of Pennsylvania, Eastern court, at Philadelphia, this 23rd day
 District, 1776. of October, A. D. 1895.

CHAS. S. GREENE,
Prothonotary.

Appeal and Affidavit.

In the Supreme Court of Pennsylvania for the Eastern District.
 Court of Quarter Sessions of the County of Philadelphia, October
 Term, 1893.

COMMONWEALTH OF PENNSYLVANIA, Plaintiff, Appellant, }
vs. } No. 372.
 J. OTIS PAUL, Defendant, Appellee.

13 Enter appeal on behalf of the Commonwealth of Pennsylvania
 from the judgment of the court of quarter sessions of the
 county of Philadelphia entered in the above case April 18th, 1894.

A. MORTON COOPER,
 CARROLL R. WILLIAMS,
 GEORGE S. GRAHAM, *District Attorney,*
Attorneys for Plaintiff.

To Charles S. Greene, proth'y sup. ct., E. D.

COUNTY OF PHILADELPHIA, ss :

Eastburn Reeder, being duly affirmed, saith that the above ap-
 peal is not intended for delay.

EASTBURN REEDER.

Affirmed and subscribed this 15th day of May, A. D. 1894.

CHARLES S. GREENE,
Prothonotary.

Endorsement: 106. July term, 1894, supreme court of Penn-
 sylvania, eastern district. Comm'th, appellant, *vs.* J. Otis Paul.
 Appeal and affidavit. A. Morton Cooper, Carroll R. Williams;
 George S. Graham, district attorney. Filed May 26, 1894, in su-
 preme court.

14 *Precipe for Certiorari.*

In the Supreme Court of Pennsylvania for the Eastern District.

COMMONWEALTH OF PENNSYLVANIA, } No. 372. Certiorari to the
 Plaintiff, Appellant, } Court of Quarter Sessions of
vs. } the County of Philadelphia,
 J. OTIS PAUL, Defendant, Appellee. } of October Term, 1893.

Issue certiorari to the court of quarter sessions of the county of
 Philadelphia to bring up record and proceedings in a certain action

in said court, No. 372, October term, 1893, wherein Commonwealth of Pennsylvania is plaintiff and J. Otis Paul is defendant.

Returnable to next term *sec. reg.*

A. MORTON COOPER,
CARROLL R. WILLIAMS,
GEORGE S. GRAHAM, *District Attorney,*
Attorneys for Plaintiff & Appellant.

To Charles S. Greene, proth'y sup. court, E. D.

Endorsement: No. 106. July term, 1894, supreme court of Pennsylvania, eastern district. Comm'th, appellant, vs. J. Otis Paul. Precipe for certiorari. A. Morton Cooper, Carroll R. Williams; George S. Graham, district attorney. Filed May 26, 1894, in supreme court.

15

Writ of Certiorari.

EASTERN DISTRICT OF PENNSYLVANIA, {
City and County of Philadelphia, } ss :

The Commonwealth of Pennsylvania to the justices of the court of quarter sessions for the county of Philadelphia, Greeting:

We, being willing for certain causes to be certified of the matter of the appeal of Commonwealth of Pennsylvania from the judgment in No. 372, October sessions, 1893, wherein the said appellant was plaintiff and J. Otis Paul was defendant, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the first Monday of January next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the twenty-
[L. s.] sixth day of May, in the year of our Lord one thousand eight hundred and ninety-four.

CHARLES S. GREENE,
Prothonotary.

16

Endorsement: 372. October sess., 1893. Q. S. Philadelphia. No. 106. July term, 1894, supreme court. Commonwealth of Pennsylvania, appellant, v. J. Otis Paul. Certiorari to the court of quarter sessions for the county of Philadelphia, returnable the first Monday of January, 1895. Rule on the appellee to appear and plead on the return day of the writ. Brought into office May 26, 1894. A. Morton Cooper, Carroll R. Williams; George S. Graham, district attorney. Filed Dec. 27, 1894, in supreme court.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

J. I. CLARK HARE. [L. s.]

True Bill.

CITY AND COUNTY OF PHILADELPHIA, ss :

In the Court of Quarter Sessions of the Peace for the City and County of Philadelphia, October Sessions, 1893.

The grand inquest of the Commonwealth of Pennsylvania, inquiring for the city and county of Philadelphia, upon their respective oaths and affirmations do present that J. Otis Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully sell as an article of food a certain article manufactured out of some oleaginous substance and compound
17 of the same other than that produced from unadulterated milk and cream from the same, the said article being designed to take the place of butter produced from pure, unadulterated milk and cream from the same, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said J. Otis Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully sell as an article of food a certain substance in imitation of butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their respective oaths and affirmations aforesaid do further present that the said J. Otis Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully sell as an article of food adulterated butter, contrary to the form of the act of the General
18 Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said J. Otis Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at

the county aforesaid and within the jurisdiction of this court, did then and there unlawfully offer for sale as an article of food a certain article manufactured out of some oleaginous substance and compound of the same other than that produced from unadulterated milk and cream from the same, the said article being designed to take the place of butter produced from pure, unadulterated milk and cream from the same, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said J. Otis Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, 19 did then and there unlawfully offer for sale as an article of food a certain article in imitation of butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said J. Otis Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully offer for sale as an article of food adulterated butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their respective oaths and affirmations aforesaid do further present that the said J. Otis Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there have in his possession, with intent 20 to sell as an article of food, a certain article manufactured out of some oleaginous substance and compound of the same other than that produced from unadulterated milk and cream from the same, the said article being designed to take the place of butter produced from pure, unadulterated milk and cream from the same, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said J. Otis Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully have in his possession, with intent to sell as an article of food, a certain substance in imitation of butter, contrary to the form of the act of the General Assembly in such case

made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

And the grand inquest aforesaid upon their oaths and affirmations aforesaid do further present that the said J. Otis Paul, late of the said county, yeoman, on the second day of October, in the year of our Lord one thousand eight hundred and ninety-
 21 three, at the county aforesaid and within the jurisdiction of this court, did then and there unlawfully have in his possession, with intent to sell as an article of food, adulterated butter, contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

GEORGE S. GRAHAM,
District Attorney.

Endorsement: Witnesses: Evan R. Penrose, P. O. bldg., Phila., Pa.; Maggie Donnelly, Jas. E. Crawford, E. F. Donnelly, W. J. Sloan, A. K. Cassell, 1326 Chestnut St., Phila., Pa.; Dr. Wm. Beam, Dr. Henry Leffmann, 715 Walnut St., Phila., Pa. 10, 1893, bail, \$500, to October term, '93. No. 519 Noble St., 2nd ward. District attorney. 11, 3, 1893, recognizance of defendant and surety forfeited. No. 372. October sessions, 1893. Commonwealth vs. J. Otis Paul, 214 Callowhill St. Selling imitation butter, having the same in possession with intent to sell as an article of food. True bill. C. A. Porter, foreman. Oct. 16, 1893. 11, 16, '93, the defendant, being arraigned, plead not guilty. Dist. att'y sim., *et* issue.

Verdict, — —, 189—.

Sentence, —.

COMMONWEALTH

vs.

J. OTIS PAUL and GEORGE E. PAUL. }

List of Witnesses.

1. Evan R. Penrose, deputy collector of internal revenue, P. O. bldg., Phila.
2. Rose Donnelly, 36 North 16th street, Phila.
3. E. F. Donnelly, " " " "
4. J. E. Crawford, room 35, 1326 Chestnut St., "
- 22 5. W. J. Sloan, room 35, 1326 Chestnut St., Phila.
6. Dr. William Beam, 715 Walnut " "
7. Dr. Henry Leffmann, " " " "
8. Frank Lieber, 924 Ridge Ave., "
9. Joseph Beal, 2859 Fox street, "

The following witnesses are retail dealers in oleo. who have bought the article from the defendants. The subpoenas for them should require them to produce all bills and receipts and cancelled checks issued in payment for oleo. purchased from the defendants in the past two years:

1. C. Howard Wortman, 2228 North 28th street, Philadelphia, Pa.

2. James J. Curran, Frankford road near Somerset street, Phila., Pa.

3. John A. Frost, stall 189 Union m'k't, Callowhill & N. 2nd St., Phila., Pa.

4. George Stewart, Eleventh-street " Phila., Pa.

5. Orlando Reynor, 4465 Frankford avenue, "

6. William Talbot, 1232 North 2nd street, "

7. Thomas Callahan, 356 " Front " "

8. A. F. Reiser, 408 New Market " "

The house of refuge made a large number of purchases from the defendants. Summon John M. Schwartz, 1116 Girard street, book-keeper of house of refuge, to produce receipted bills from the defendants for oleomargarine bought from the defendants in the past two years.

Endorsement: List of witnesses in case of Commonwealth vs. J. Otis Paul, George E. Paul. Nov. 13, '93.

23

COMMONWEALTH OF PENNSYLVANIA }
vs. }
J. OTIS PAUL.

Special Verdict.

The jury find the following facts:

(1.) The defendant, J. Otis Paul, is a resident and citizen of the Commonwealth of Pennsylvania and is the duly authorized agent in the city of Philadelphia of Braun and Fitts, Chicago, Illinois.

(2.) The said Braun and Fitts are engaged in the manufacture of oleomargarine in the said city of Chicago and State of Illinois, and as such manufacturers have complied with all the provisions of the act of Congress of August 2nd, 1886, entitled "An act defining butter; also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine."

(3.) The said defendant, as agent aforesaid, is engaged in business at No. 214 Callowhill street, in the city of Philadelphia, as wholesale dealer in oleomargarine, and was so engaged on the second day of October, 1893.

(4.) The said defendant, on the first day of July, 1893, paid to the collector of internal revenue of the first district of Pennsylvania the sum of four hundred and eighty dollars as and for a special tax upon the business, as agent for Braun and Fitts Company, in oleomargarine, and obtained from said collector a writing in the words following:

Stamp for
\$480
per year.
No. A 431.

United States
internal revenue.

Special tax,
\$480
per year.
No. A 431.

Received from J. Otis Paul & Geo. E. Paul, agents for the Chicago Butterine Co., the sum of four hundred and eighty dollars for

special tax on the business of wholesale dealer in oleomargarine, to be carried on at 214 Callowhill street, Philadelphia, State of Pennsylvania, for the period represented by the coupon or coupons hereto attached.

Dated at Philadelphia, Pa., July 1st, 1893.

[SEAL.]

\$480.

WILLIAM H. DOYLE,

Collector, First District of Pennsylvania.

The following clauses appear on the margin of the above :

The stamp is simply a receipt for a tax due the Government and does not exempt the holder from any penalty or punishment provided for by the law of any State for carrying on the said business within such State and does not authorize the commencement nor the continuance of such business contrary to the laws of such State or in places prohibited by a municipal law. See section 3243, Revised Statutes U. S.

25 Severe penalties are imposed for neglect or refusal to place and keep this stamp conspicuously in your establishment or place of business. Act of August 2nd, 1886.

Attached to this were coupons for each month of the year in form as follows :

Coupon for special tax on wholesale dealer in oleomargarine for October, 1893.

(5.) On or before the said second day of October, 1893, the said Braun & Fitts shipped to the said defendant, their agent aforesaid, at their place of business in Philadelphia, a package of oleomargarine separate and apart from all other packages, being a tub thereof containing ten pounds, packed, sealed, marked, stamped, and branded in accordance with the requirements of the said act of Congress of August second, 1886. The said package was an original package, as required by said act, and was of such form, size, and weight as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in the ordinary course of actual commerce, and the said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania, said package being one of a number of similar packages forming one consignment shipped by the said company to the said defendant. Said package-forming said consignment were unloaded from the cars and placed in defendant's store and there offered for sale as an article of food.

26 (6.) On the said second day of October, 1893, in the said city of Philadelphia, at the place of business aforesaid, the said defendant, as wholesale dealer aforesaid, sold to James E. Crawford the said tub or package mentioned in the foregoing paragraph, the oleomargarine therein contained remaining in the original package, being the same package, with seals, marks, stamps, and brands unbroken, in which it was packed by the said manufacturer in the said city of Chicago, Illinois, and thence transported into the city of Philadelphia and delivered by the carrier to the defendant; and the said tub was not broken nor opened on the said premises of the said

defendant, and as soon as it was purchased by the said James E. Crawford it was removed from the said premises.

(7.) The oleomargarine contained in said tub was manufactured out of an oleaginous substance not produced from unadulterated milk or cream, and was an article designed to take the place of butter, and sold by the defendant to James E. Crawford as an article of food; but the fact that the article was oleomargarine and not butter was made known by the defendant to the purchaser, and there was no attempt or purpose on the part of the defendant to sell the article as butter or any understanding on the part of the purchaser that he was buying anything but oleomargarine, and the said oleomargarine is recognized by the said act of Congress of August 2nd, 1886, as an article of commerce.

27 (8.) The above transaction specifically found by the jury is one of many transactions of like character made by the defendant during the last two years.

Endorsement: Court of quarter sessions. October sessions, 1893. No. 372. Commonwealth vs. J. Otis Paul. Special verdict. November 16, 1893. Special verdict of July finding the facts as within stated.

October Sessions, 1893.

COM.	}	372. True Bill.
vs.		
J. OTIS PAUL.		

Selling imitation butter, having the same in possession with intent to sell as an article of food.

November 16th, 1893—Present: Hon. J. I. Clark Hare. Defendant present, and, being arraigned, pleads not guilty.

District attorney *sim.*, *et* issue.

Same day, defendant present is put upon trial; a jury, being called, answer, appear, and are chosen as follows: Edward Hanley, Michael J. Hayden, Samuel Cress, Thos. Wolf, Frank Rantz, Jno. Hablutzel, Harry Boyer, Samuel Strang, Harry M. White, Jno. Burkmire, A. Stevens, Matthew Haas, who were all duly empanelled, sworn, or affirmed, and, being charged by the court, do find that—

(1) The defendant, J. Otis Paul, is a resident and citizen of the Commonwealth of Pennsylvania, and is the duly authorized agent in the city of Philadelphia of Braun & Fitts, of Chicago, Illinois.

28 (2) The said Braun & Fitts are engaged in the manufacture of oleomargarine in the said city of Chicago and State of Illinois, and as such manufacturers have complied with all the provisions of the act of Congress of August 2nd, 1886, entitled "An act defining butter; also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine."

(3) The said defendant, as agent aforesaid, is engaged in business at No. 214 Callowhill street, in the city of Philadelphia, as wholesale dealer in oleomargarine, and was so engaged on the second day of October, 1893; paid to the collector of internal revenue of the first

district of Pennsylvania the sum of four hundred and eighty dollars as and for a special tax upon the business, as agent for Braun & Fitts Company, in oleomargarine, and obtained from said collector a writing in the words following:

Stamp for
\$480
per year.
No. A 431.

United States
internal revenue.

Special tax,
\$480
per year.
No. A 431.

Received from J. Otis Paul and Geo. E. Paul, agents for the Chicago Butterine Company, the sum of four hundred and eighty dollars for special tax on the business of wholesale dealer in oleomargarine, to be carried on at No. 214 Callowhill street, Philadelphia, State of Pennsylvania, for the period represented by the coupon or coupons hereto attached.

29 Dated at Philadelphia, Pa., July 1st, 1893.

[SEAL.]
(\$480.)

WILLIAM H. DOYLE,
Collector, First District of Pennsylvania.

The following clauses appear on the margin of the above: This stamp is simply a receipt for a tax due the Government, and does not exempt the holder from any penalty or punishment provided for by the law of any State for carrying on the said business within such State, and does not authorize the commencement nor the continuance of such business contrary to the laws of such State or in places prohibited by a municipal law. See section 3243, Revised Statutes U. S.

Severe penalties are imposed for neglect or refusal to place and keep this stamp conspicuously in your establishment or place of business. Act of August 2nd, 1886. Attached to this were coupons for each month of the year in form as follows: Coupon for special tax on wholesale dealer in oleomargarine for October, 1893.

On or before the said second day of October, 1893, the said Braun & Fitts shipped to the said defendant, their agents aforesaid, at their place of business in Philadelphia, a package of oleomargarine, separate and apart from all other packages, being a tub thereof containing ten pounds, packed, sealed, marked, stamped, and branded in accordance with the requirements of the said act of Congress of August 2nd, 1886. The said package was an original package, as required by said act, and was of such form, size, and weight as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation or merchandise between dealers in the ordinary course of actual commerce, and the said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania, said package being one of a number of similar packages forming one consignment shipped by the said company to the said defendant. Said packages forming said consignment were unloaded from the cars and placed in defendant's store and were offered for sale as an article of food.

(6th.) On the said second day of October, 1893, in the said city

of Philadelphia, at the place of business aforesaid, the said defendant, as wholesale dealer aforesaid, sold to James E. Crawford the said tub or package mentioned in the foregoing paragraph, the oleomargarine therein contained remaining in the original package, being the same package, with seals, marks, stamps, and brands unbroken, in which it was packed by the said manufacturer in the said city of Chicago, Illinois, and thence transported into the city of Philadelphia and delivered by the carrier to the defendant, and the said tub was not broken nor opened on the said premises of the said defendant, and as soon as it was purchased by the said James E. Crawford it was removed from the said premises.

(7th.) The oleomargarine contained in said tub was manufactured out of an oleaginous substance not produced from unadulterated milk or cream, and was an article designed to take the place of butter, and sold by the defendant to James E. Crawford as an

31 article of food; but the fact that the article was oleomargarine and not butter was made known by the defendant to the purchaser, and there was no attempt or purpose on the part of the defendant to sell the article as butter or any understanding on the part of the purchaser that he was buying anything but oleomargarine, and the said oleomargarine is recognized by the said act of Congress of August 2nd, 1886, as an article of commerce.

(8th.) The above transaction specifically found by the jury is one of many transactions of like character made by the defendant during the last two years.

Whereupon the district attorney, on behalf of the Commonwealth, moves the court for judgment upon the verdict in favor of the Commonwealth and against the defendant.

November 27th, 1893—present, Hon. J. I. Clark Hare—motion for judgment argued and held under advisement.

April 18th, 1894—present, Hon. J. I. Clark Hare—judgment entered for the defendant upon the special verdict.

May 26th, 1894.—Certiorari brought into office.

Assignments of Error.

Supreme Court for Eastern District, July Term, 1894.

COMMONWEALTH OF PENNSYLVANIA, Appellant,	} No. 106.
<i>vs.</i>	
J. OTIS PAUL, Defendant Below and Appellee.	

32 Appeal of plaintiff from the judgment of and certiorari to the court of quarter sessions of Philadelphia county, October term, 1893, No. 372.

The Commonwealth in the above case assigns as error:

1. The court erred in entering judgment for the defendant on the special verdict.

2. The court erred in not entering judgment for the plaintiff on the special verdict.

A. MORTON COOPER,
CARROLL R. WILLIAMS,
GEO. S. GRAHAM,
Per C. R. W., *Dist. Att'y*,
Attorneys for the Commonwealth.

Endorsement: No. 106. July term, 1894, supreme court, eastern dist. Com. of Pennsylvania, appellant, *vs.* J. Otis Paul. Assignments of error. A. Morton Cooper, Carroll R. Williams; Geo. S. Graham, dist. att'y, for Commonwealth. Filed Jan. 7, 1895, in supreme court.

Opinion of the Supreme Court of Pennsylvania.

COMMONWEALTH, App't, }
 vs. } 106. July Term, 1894.
J. OTIS PAUL. }

Appeal from the judgment of the court of quarter sessions of the peace of Philadelphia Co.

WILLIAMS, J.:

It is not necessary to the decision of this case that we should enter upon the discussion of the existence and extent of the police power residing in the several States of the Union. It is quite as unnecessary to argue that the power of Congress to regulate commerce between the citizens of the different States was not intended to abridge the lawful exercise of the police power by any of the State governments. If judicial decisions can be said to settle any question, these questions are clearly and properly settled by the decisions of the highest tribunal known to our laws, and settled in accordance with the rules laid down in this State since its first organization. In *Commonwealth vs. Power*, 127 U. S., 678, the right of this State to deal, in the exercise of its police power, with the manufacture and sale of oleomargarine and the validity of the particular statute under consideration in this case were distinctly affirmed. During the last year (1894) a Massachusetts statute relating to the same subject came before the Supreme Court of the U. S. in *Plumley vs. Massachusetts*, 155 U. S., 461, and was sustained as a lawful exercise of the police power. The defendant in that case had, as the defendant in this case has, a license from the internal revenue department of the United States authorizing him to deal in oleomargarine. It was held, however, that this did not authorize him to engage in the manufacture or sale of oleomargarine in violation of the State laws lawfully passed forbidding or regulating such manufacture and sale. The dealer in articles which the State in the exercise of its police power places under restrictions must make his peace with the State in which his business is conducted, as well as with the internal revenue laws of the United States. This proposition the defendant denies. He has made his

peace with the tax laws of the United States, but denies the power of the State to regulate or restrict his sales of the commodity in which he deals, and asserts that he is engaged in interstate commerce within the true intent of the constitutional provision conferring upon Congress the power to regulate commerce between the several States. In determining the question thus raised it is important to keep in mind the facts found by the special verdict, as follows: 1. The defendant is a resident in and citizen of this State, with a store or place of business at No. 214 Callowhill street, Philadelphia. 2nd. He is conducting the sale of oleomargarine as the agent for the "Chicago Butterine Company," which is a firm or corporation doing business in Illinois, and is the licensed dealer at No. 214 Callowhill street. 3. The oleomargarine was not made from milk or cream. It was designed to be used in place of butter. It was sent from Chicago to Philadelphia to be sold as food, and the tub sold to Crawford, which is complained of in this case, was sold to him for use as an article of food. 4. The tub contained ten pounds only, was put up, sealed, and stamped at the factory in the State of Illinois, was received in the same form in Philadelphia, and then "placed in defendant's store and offered for sale as an article of food." 5. This was one of "many transactions of like character made by the defendant during the last two years," or, in other words, this was the way in which the defendant did business for

his non-resident principals, the manufacturers. They put up
35 the article in ten-pound packages suited for the retail trade, and because they do not allow their agents to open or divide these they treat their trade as wholesale, though in fact they supply the actual consumer and not the retail dealers. Looking now at these facts in the light of the cases cited, we shall find every question raised by them has been decided against the defendant by the Supreme Court of the United States except one. The validity of our act of assembly has been distinctly affirmed as a lawful exercise of the police power. The fact that an internal-revenue license affords the defendant no justification for disregarding a lawful exercise of the police power by the State is stated with equal clearness. The proposition that the judiciary of the United States should not strike down the police power of the States in the exposition of the interstate commerce powers of the General Government was asserted and abundantly vindicated in *Plumley vs. Massachusetts*, *supra*, decided within the last year. Our statute is directed especially against the sale of oleomargarine as an article of food. The defendant, in willful and flagrant disregard of the letter as well as the spirit of the statute, keeps these tubs of the commodity manufactured by his principals at the store in Callowhill street for sale "as an article of food." He offers them for sale for use as an article of food, and he sold to Crawford the ten-pound tub, which is the ground of complaint in this case, for use as food. Now, it is very clear that

36 this sale was a violation of our statute. The conviction was eminently proper therefore and should be sustained unless the sale can be justified as one made of an original package within the proper meaning of that phrase. The non-residence of the manu-

facturer does not play any important part in this case, for he comes into this State to establish a "store" for the sale of his goods, pays the license exacted by the revenue laws, and puts his agent in charge of the sale of his goods from his store not to the trade, but to consumers. We have, therefore, a Pennsylvania store selling its stock of goods to its customers for their consumption from its own shelves, and unless these goods are in such original packages as the laws of the United States must protect, the sale is clearly punishable under our statute.

We first encountered this question of what shall constitute an original package within the meaning of our national interstate commerce legislation in *Commonwealth vs. Zelt*, 138 Pa., 615. A non-resident manufacturer of intoxicating drinks put up his whiskey and other liquors in quart and pint bottles adapted for use in the retail trade to consumers. These he sent to an agent in charge of a store rented for the purpose in Washington, Pa. The bottles were corked, some sealing wax put over the cork, and the brand or initials of the manufacturer impressed thereon. The bottles so secured were then put in pasteboard boxes or covers and packed in open boxes or barrels for shipment to the Pennsylvania store.

37 When they were received at the store the bottles were arranged and displayed on the shelves and offered for sale to the consumer as original packages of whiskey. Neither the distiller who shipped the whiskey nor his agent who sold it had a license to sell intoxicating drinks under the liquor laws of this State, but made sales of whiskey and beer by the pint and quart under the pretence that each bottle was an original package of commerce. The learned judge before whom an indictment against the seller of the bottles of liquor was brought to trial submitted the question to the jury whether the method of putting up the liquors in bottles was not adopted as a device to evade the liquor laws of this State. The jury found the fact to be that it was a mere device and rendered a verdict of guilty. Upon an appeal to this court the ruling of the court below was affirmed, and in speaking on the second assignment of error we said that whether whiskey or beer could be put up in pint bottles and sold by the single bottle as an original package under the protection of the interstate commerce laws was a question that would be decided when it was squarely raised. The question was next raised in *Commonwealth vs. Schollenberger*, 156 Pa., 201, and its decision became necessary to the disposition of that case. In that case a non-resident manufacturer of oleomargarine had established a store for its sale in Phila. and held a license under the internal-revenue laws authorizing such sale.

38 His agent sold a tub of "the goods" to a boarding-house keeper for use in the place of butter on his table. The defence was that the tub had not been broken or divided by the seller, and was therefore an original package within the meaning of the interstate-commerce cases. We held that the conclusion did not follow from the fact stated, and attempted to define an "original package" as such a package as was used in good faith by producers

and shippers for convenience in handling and security in transportation of their wares in the ordinary course of actual commerce.

But we also said that where the size of the package was adapted for the retail trade, so that "breaking of bulk" was not necessary to "reduce the goods into the common mass" and fit them for the retail trade, the traffic so conducted was not interstate, but intrastate commerce; or, in other words, the common every-day retail traffic of the community in which the store was located. Let us look at the consequences of the adoption of the opposite rule. If a pint bottle of whiskey is an original package under the protection of Congress, and can be sold as such regardless of the police legislation of the State, we cannot punish the sale to a minor, to a person of known intemperate habits, to a lunatic, on election days, or on the Sabbath. All power over the traffic for police purposes is gone. And why? Because the power to regulate interstate commerce, intended to guard against stoppage along State lines for examination or the collection of customs duties, has been extended by construction until it is made to reach and protect

39 a retail traffic carried on within any State if the things sold have come into the retailer's store from a non-resident manufacturer or shipper. If this be a sound construction, then the power of a State to restrict or prohibit an injurious traffic does not depend on the deleterious character of the thing sold or the manner in which sales are made or the public or private injury inflicted by the sale, but on the manner in which the thing sold comes into possession of the seller. If he makes the article or buys it of another citizen of the State, he cannot sell it without punishment.

If he buys it of a non-resident who sends it to him across the State line, he may sell it with impunity and the State is powerless to stay his hands or to regulate his sales. A pint of whiskey put up in a flask, if made or bought in this State, cannot be sold without a license granted by the courts after an examination into the character of the applicant and his business. The same flask of whiskey put up across the border may come as an original package into any community and be sold to any person, whether a minor, a drunkard, or a lunatic, under the protection of the Constitution of the United States.

We cannot adopt a construction that seems to us so unnatural and unreasonable and that would work such absurd and monstrous results. On the contrary, we hold, as we think is held by the recent case of *Plumley v. Massachusetts*, already referred to, that the mere fact that a police law may affect the trade in articles brought

40 from another State does not amount to an attempt to regulate interstate commerce or to an assumption of power belonging to Congress. Coming now to the facts of this case, we find the alleged "original package of commerce" to be a small tub of oleomargarine containing ten pounds, and, in fact, sold to a consumer for use as an article of food upon his table. It is true that the defendant treats his trade as one carried on at wholesale, but the facts of the special verdict show that this is not because he supplies dealers or sells in large quantities for shipment, but because

he treats the little tubs and packages he sells his customers as "original packages of commerce" and his law-breaking traffic as "interstate commerce." He does not "break bulk" by taking one pound out of a package and weighing it on his scales for the supply of a customer, but requires him to take a whole tub, whether of ten pounds, or of two, or of one is immaterial, but it must be a whole package as it was put up at the factory. If the pint bottle or the pound package has not been opened and divided before the sale, the contention is that it has not become a part of "the common mass" of property entering into the ordinary business of the citizens of the State, but is an original — under the protection of Congress as interstate commerce.

The question to which we are thus brought is the same that was encountered in *Commonwealth v. Schollenberger*, 156 Pa., 41 201. It is whether a package intended and used for the supply of the retail trade is an "original package" within the protection of the interstate-commerce cases.

We held in that case that a manufacturer who puts up his products in packages evidently adapted for and intended to meet the requirements of an unlawful retail trade in another State and sends them to his own agent in that State for sale to consumers is not engaged in interstate commerce, but is engaged in an effort to carry on a forbidden business by masquerading in a character to which he has no honest title.

We are not dealing with the legislative question. Whether the trade in oleomargarine is injurious and should be restricted is a question that has been decided for us. It has been declared injurious. It has been placed under restrictions. These restrictions have been held to be a valid exercise of the police power both by this court and the Supreme Court of the United States. Our question is whether this valid restriction can be enforced, or whether the transparent trick of putting up oleomargarine in small packages in another State, so that it can be sold at retail to consumers as an article of food, will clothe an unlawful retail traffic with the coat of mail belonging to honest, legitimate interstate commerce and set the police laws of the State at defiance.

In disposing of this question we hold as follows: 1st. The character of the package, whether original or not, is a question 42 of fact, when there are facts to be passed upon bearing upon this question, and should go to the jury.

2nd. It is a question of law when the facts are agreed upon or presented by a special verdict, as in this case, and should be decided by the court.

3rd. It is fair to presume that a package was intended by him who devised it for the purpose for which he uses it in his own business.

4th. A package devised by a non-resident manufacturer or put up by him adapted for sale at retail to individual consumers—such, for example, as a flask of whiskey or a tub or pail or roll of oleomargarine—and actually sold by him or his agent to the consumer for use as an article of food or drink in violation of the laws of the

State where such sales take place is not an "original package" within the meaning of the law relating to interstate commerce.

5th. The punishment of such sales under the police power of the State is not an interference with the powers of Congress or with the commerce between the States, which is protected by the Constitution of the United States.

The judgment is reversed and judgment is now entered on the special verdict in favor of the Commonwealth. The record is remitted that sentence may be imposed according to law.

43 Endorsement: 106. July term, 1894. Commonwealth, app't v. J. Otis Paul. Appeal from the judgment of the court of quarter sessions of Phila. county. 17 Jan'y, '95. Williams. Filed Oct. 7, 1895, in supreme court.

I hereby certify that the above and foregoing is a true and correct copy of the opinion in the above-entitled cause, so full and entire as appears of record in our said supreme court.

Seal of the Supreme Court
of Pennsylvania, East-
ern District, 1776.

In testimony whereof I have here-
unto set my hand and seal of said court,
at Philadelphia, this 23rd day of Octo-
ber, A. D. 1895.

CHAS. S. GREENE,
Prothonotary.

44 UNITED STATES OF AMERICA, } ss :
 State of Pennsylvania,

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages 1 to 43, inclusive, is a true and faithful copy of the record and proceedings of the supreme court of the State of Pennsylvania, eastern district, in a certain suit therein pending, wherein Commonwealth of Pennsylvania was appellant and J. Otis Paul was appellee.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court of the State of Pennsylvania, eastern district, at Philadelphia, the 12th day of November, 1895, and in the one hundred and twentieth year of the Independence of the United States.

Seal of the Supreme Court
of Pennsylvania, Eastern
District, 1776.

CHAS. S. GREENE,
*Prothonotary of the Supreme Court of
Pennsylvania, Eastern District.*

45 I, James P. Sterrett, chief justice of the supreme court of Pennsylvania, do hereby certify that Charles S. Greene was at the time of signing the annexed attestation and now is prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this

twelfth day of November, one thousand eight hundred and ninety-five.

JAMES P. STERRETT,
Chief Justice Sup. Court.

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable James P. Sterrett, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania in and for the eastern district, at Philadelphia, this twelfth day of November, one thousand eight hundred and ninety-five.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

46 Supreme Court of U. S., Oct. Term, 1895.

J. OTIS PAUL (Plaintiff in Error),	} No. 813.
<i>v.</i>	
THE COMMONWEALTH OF PENNSYLVANIA.	

Assignments of Error.

1st. The court erred in reversing the judgment of the court of quarter sessions, entered upon the findings of fact of the special jury, and in entering judgment for the Commonwealth of Pennsylvania.

2nd. The court erred in not affirming the judgment of the court of quarter sessions upon the findings of fact of the special verdict.

3rd. The court erred in failing to hold the act of 21st of May, 1885, null and void, in so far as it attempted to prohibit the sale of an article of interstate commerce in the original package of commerce.

4th. The court erred in holding that the sale by the defendant below was not a sale of an article of interstate commerce in the original package of commerce.

5th. The court erred in assuming that the sale by the defendant below was at retail; the special verdict found that the defendant below was a wholesale dealer.

6th. The court erred in apparently holding that, in the absence of any legislation in Pennsylvania with reference to the sale of oleomargarine by retail or by wholesale, a sale by retail would be void, although a sale by wholesale would be valid under the interstate-commerce law.

47 7th. The court erred in assuming that the sale by the defendant below was a sale to a consumer. The facts found by the special verdict were, "the said defendant, as wholesale dealer aforesaid, sold the said tub or package mentioned," without any finding as to the occupation of the purchaser.

8th. The court erred in holding, as it apparently did, that a sale to a consumer of an article of interstate commerce is not protected by art. 1, sec. 8, of the National Constitution, even though such sale was a sale in the original package of commerce.

9th. The court erred in holding that the sale by the defendant below was a sale of "a package devised by a non-resident manufacturer or put up by him, adapted for sale at retail to individual consumers." The findings of fact of the special verdict were the said package "was of such form, size, and weight as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandize in the ordinary course of actual commerce."

10th. The court erred in holding that the package sold by the defendant below was devised by the manufacturer of such form and size as to evade the laws of the State. The findings of the special verdict were, "the said form, size, and weight were adopted in good faith and not for the purpose of evading the laws of the Commonwealth of Pennsylvania."

A. B. RONEY,
R. C. DALE,
H. R. EDMUNDS,
Counsel for Plaintiff in Error

Endorsed on cover: Case No. 16,103. Pennsylvania supreme court. Term No., 384. J. Otis Paul, plaintiff in error, vs. The Commonwealth of Pennsylvania. Filed December 5th, 1895.

IN THE SUPREME COURT OF PENNSYLVANIA FOR
THE EASTERN DISTRICT OF PENNSYLVANIA.

JULY TERM, 1894.

COMMONWEALTH OF PENNSYLVANIA

vs.

J. OTIS PAUL,
Defendant below and Appellee.

No. 106.

Appeal by plaintiff from the judgment of the Court of Quarter Sessions of Philadelphia County.

I, JAMES P. STERRETT, Chief Justice of the Supreme Court of Pennsylvania at the present time and upon the argument and hearing of the above entitled appeal, do hereby certify:

I. That upon the said argument and hearing the validity of the statute of Pennsylvania of May 21, 1885, was drawn in question by the said defendant J. Otis Paul on the ground of its being repugnant to section 8 of Article I of the Constitution of the United States, and that the decision of the said Supreme Court of Pennsylvania was in favor of the validity of the said statute.

II. That upon the said argument and hearing the said defendant J. Otis Paul specially set up and claimed the right, privilege and immunity under the said section 8 of Article I of the Constitution of the United States of selling an article of interstate commerce, and that the decision of the said Supreme Court of Pennsylvania was against the said right, privilege and immunity so set up and claimed as aforesaid.

III. That upon the said argument and hearing the said defendant J. Otis Paul specially set up and claimed that the said statute of Pennsylvania of May 21, 1885, was null and void under the Constitution of the United States in so far as it attempted to prohibit the sale of an article of interstate commerce in the original packages of commerce, and that the decision of the said Supreme Court of Pennsylvania was against the said claim.

IV. That upon the said argument and hearing, the said defendant J. Otis Paul specially set up and claimed that the sale of oleomargarine by him for which he was indicted was a sale of an article of interstate commerce in the original package of commerce and therefore within his rights, privileges and immunities under the Constitution of the United States, and that the decision of the said Supreme Court of Pennsylvania was against the said claim.

In witness whereof, I have hereunto subscribed my name this day of March, one thousand eight hundred and ninety-eight.

JAMES P. STERRETT,
Chief Justice Supreme Court.

March 21, 1898.

I, CHARLES S. GREENE, Prothonotary of the Supreme Court of Pennsylvania in and for the Eastern District, do certify that the Honorable JAMES P. STERRETT, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now Chief Justice of the Supreme Court of Pennsylvania to whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court of Pennsylvania in and for the Eastern District, at Philadelphia this twenty-first day of March, one thousand eight hundred and ninety-eight.

CHAS. S. GREENE,
Prothonotary.

[SEAL.]



TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 17.

CLARENCE E. COLLINS, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEW HAMPSHIRE

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW
HAMPSHIRE

FILED MAY 20, 1894.

(15,598.)

73
10

(15,598.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 110.

CLARENCE E. COLLINS, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEW HAMPSHIRE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW
HAMPSHIRE.

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1 UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the judges of the supreme court of the State of New Hampshire, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the State of New Hampshire in which a decision could be had in or upon an indictment found by the grand jury at a term of the said supreme court holden at Nashua, in and for said county of Hillsborough and State of New Hampshire, against Clarence E. Collins, of Manchester, in said county of Hillsborough, petitioner for writ of error to the United States Supreme Court, at Washington, in the District of Columbia, and the said State of New Hampshire appearing and opposing said petitioner for his writ of error, wherein was drawn in question the validity of a statute or law of said State of New Hampshire, on the ground of its being repugnant to the Constitution and laws of the United States, and the decision in and by said State court was in favor of the validity of such State law, and a manifest error hath happened, to the great damage of the said Clarence E. Collins, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further

2 to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twelfth day of May, in the year of our Lord one thousand eight hundred and ninety-four.

[L. s.]

FREMONT E. SHURTLEFF,

*Clerk of the Circuit Court of the United States
for the District of New Hampshire.*

Allowed by—

C. DÖE,

*Chief Justice of the Supreme Court of the
State of New Hampshire.*

3 STATE OF NEW HAMPSHIRE, } ss :
Hillsborough,

And now here the judges of the supreme court of the State of New Hampshire make return of this writ by annexing hereto and sending herewith under the seal of the said supreme court a true and

attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

Seal Supreme Court
New Hampshire.

In testimony whereof I, Thomas D. Luce, clerk of said supreme court within and for the county of Hillsborough, have hereto set my hand and the seal of said court this twenty-first day of May, A. D. 1894.

THOS. D. LUCE, *Clerk.*

4 THE STATE OF NEW HAMPSHIRE, }
Hillsborough, } 88 :

At the trial term of the supreme court, holden at Manchester, within and for said county of Hillsborough, on the first Tuesday of January, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Hon. Isaac W. Smith, presiding justice.

5 The grand jurors for the State of New Hampshire upon their oath present that Clarence E. Collins, of Manchester, in the county of Hillsborough aforesaid, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-three, at Manchester, in the county of Hillsborough aforesaid, with force and arms did knowingly, unlawfully, and criminally sell to one Clifton B. Hildreth one package or tub of oleomargarine, otherwise called butterine, being a substance made wholly or in part of fats, oils, or grease not produced from milk or cream, in imitation of or as a substitute for butter, and being of another color than pink, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

And the jurors aforesaid upon their oath aforesaid do further present that the said Clarence E. Collins, at said Manchester, on said nineteenth day of May, did knowingly, unlawfully, and criminally sell to one Clifton B. Hildreth one package or tub of a substance or compound made wholly or in part of fats, oils, or grease not produced from milk or cream, in imitation of or as a substitute for butter, and being of another color than pink, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

This indictment was found and entered at the September term, 1893; the county solicitor appeared in behalf of the State; the said Clarence E. Collins, being arraigned, pleaded not guilty, and the court made the following order:

"STATE OF NEW HAMPSHIRE, }
Hillsborough, } ss :

Supreme Court, September Term, 1893.

Present : The Hon. Wm. M. Chase, presiding justice.

STATE }
v. }
CLARENCE E. COLLINS. }

To Nathan P. Hunt, of Manchester, in said county of Hillsborough,
Esquire :

By order of the court you are hereby appointed a commis-
6 sioner to receive bail in the above-entitled matter. You will
take the recognizance of said Clarence E. Collins, as princi-
pal, with two sufficient sureties in the sum of one thousand dollars
each (two hundred dollars upon each of five indictments), upon
condition that if said Clarence E. Collins shall personally attend
said court when required to do so at the present or any future term
of said court to answer further to the indictments now pending
against him, and shall attend said court from day to day and there
wait and abide the order of the court and not depart without leave
until discharged by order of court, and in the meantime keep the
peace and be of good behavior, then said recognizance shall be
void.

You will immediately report to said court your doings herein.

Dated the 24th day of November, 1893.

[L. S.]

THOS. D. LUCE, *Clerk.*"

And thereafterwards, on the twenty-seventh day of November,
1893, the said Clarence E. Collins put himself upon the country and
the county solicitor joined said issue.

Whereupon, the county solicitor and counsel for the respondent
being fully heard upon the evidence, the cause was committed to a
jury sworn according to law to try the issue, to wit, Frank X.
Foster, foreman ; M. S. Thompson, J. P. Howe, J. J. Bennett, J. A.
Coburn, W. T. Payne, E. E. Wilkins, G. W. Blair, M. C. Mullin, D.
J. Cullinane, G. S. Parkhurst, and F. B. Goodhue, who made re-
turn of their verdict thereon upon oath and said the said Clarence
E. Collins is guilty ; and certain questions of law arising upon said
indictment, the same were reserved and assigned to the determina-
tion of the court at the next law term, as follows :

HILLSBOROUGH, ss :

Supreme Court, September Term, 1893.

STATE
vs.
CLARENCE E. COLLINS. }

Indictment for selling a package of oleomargarine not of a pink color, in violation of Public Statutes, chapter 127, sections 19, 20 ; trial by jury ; verdict, guilty.

7 The respondent is agent at Manchester of Swift & Co., an Illinois corporation, having its principal place of business in Chicago. The corporation manufactures oleomargarine and puts it up in packages in Chicago, and distributes the packages from there to different places—one of which is Manchester—where it maintains stores and sells the article at wholesale in the original packages. It has paid the special U. S. taxes imposed by the act of Congress of August 2, 1886 (Suplt. to R. S. of U. S., v. 1, p. 505), and has complied with all other requirements of that act in respect to the manufacture and sale at wholesale of oleomargarine. The article has the color of butter, the same coloring matter being used to color it that is frequently used to color butter, and is made wholly or in part of fats, oils, or grease not produced from milk or cream, in imitation of or as a substitute for butter. It is not manufactured in this State. The respondent as such agent sold in Manchester, at wholesale, at the store of the company, a package of said article weighing ten pounds in the form it was put up in Chicago by his principal. The provisions of section 19, chapter 127, Public Statutes of this State were complied with, so far as the package was concerned, except the color of its contents was not pink. The oleomargarine sold was the oleomargarine of commerce as the same is known and dealt in as an article of food.

The respondent claimed that upon these facts he was not guilty, because the statute of this State is in contravention of the Constitution of the United States and its amendments and of the laws of Congress ; otherwise he admitted his guilt. The court ruled against the respondent as to the above claim, and he excepted.

Reserved. WM. M. CHASE,
Presiding Justice.

And said indictment was continued to this term, when the county solicitor and said respondent appear, and N. P. Hunt, heretofore appointed by the court a commissioner to take bail, makes the following return upon his commission :

To the supreme court :

8 On this 19th day of January, 1894, I took the recognizance of Clarence E. Collins, principal, and Horatio W. Heath and George B. Chandler, sureties, in accordance with the terms of the foregoing commission.

N. P. HUNT,
Commissioner.

And thereafterwards, at the adjourned law term of said court, the sixteenth day of March, 1894, the court render the following opinion :

The need of a uniform operation of Federal law in all the State and the apparent degree of uncertainty as to the view of the Federal court may take of this statute are reasons for a disposition of the case that will furnish an opportunity to carry the Federal question to the only tribunal by which that question can be settled, and thereupon said questions of law are returned to the trial term with an order that the exceptions be overruled.

It is therefore considered by the court that the said Clarence Collins pay a fine of one hundred dollars for the use of the court of Hillsborough ; that he pay the costs of prosecution, taxed at thirty seven dollars and ten cents, and stand committed till sentence performed.

Attest :

THOS. D. LUCE, *Clerk*

9 STATE OF NEW HAMPSHIRE, } ss :
Hillsborough,

At the supreme court holden at Nashua, within and for the county of Hillsborough aforesaid, on the third Tuesday of September, in the year of our Lord one thousand eight hundred and ninety-three.

The grand jurors for the State of New Hampshire upon their oath present that Clarence E. Collins, of Manchester, in the county of Hillsborough aforesaid, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-three, Manchester, in the county of Hillsborough aforesaid, with force and arms did knowingly, unlawfully, and criminally sell to one Clifton B. Hildreth one package or tub of oleomargarine, otherwise called butterine, being a substance made wholly or in part of fats, oils, or grease not produced from milk or cream, in imitation of or as a substitute for butter and being of another color than pink, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State; and the jurors aforesaid upon their oath aforesaid do further present that the said Clarence E. Collins, at said Manchester, on said nineteenth day of May, did knowingly, unlawfully, and criminally sell to one Clifton B. Hildreth one package or tub of a substance or compound made wholly or in part of fats, oils, or grease, not produced from milk or cream, in imitation of or as a substitute for butter and being of another color than pink, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

JAMES P. TUTTLE, *Solicitor*

This is a true bill.

JAMES B. WOODBURY, *Foreman*

10 STATE OF NEW HAMPSHIRE, } ss :
Hillsborough,

Supreme Court, September Term, 1893.

Present: The Hon. Wm. M. Chase, presiding justice.

STATE }
 v.
 CLARENCE E. COLLINS. }

To Nathan P. Hunt, of Manchester, in said county of Hillsborough, Esquire:

By order of the court you are hereby appointed a commissioner to receive bail in the above-entitled matter. You will take the recognizance of said Clarence E. Collins, as principal, with two sufficient sureties in the sum of one thousand dollars each (two hundred dollars upon each of five indictments), upon condition that if said Clarence E. Collins shall personally attend said court when required to do so, at the present or any future term of said court, to answer further to the indictments now pending against him, and shall attend said court from day to day and there wait and abide the order of the court and not depart without leave until discharged by order of court, and in the meantime keep the peace and be of good behavior, then said recognizance shall be void.

You will immediately report to said court your doings herein.

Dated the 24th day of November, 1893.

[L. S.]

THOS. D. LUCE, *Clerk.*

To the supreme court:

On this 19th day of January, 1894, I took the recognizance of Clarence E. Collins, principal, and Horatio W. Heath and George B. Chandler, sureties, in accordance with the terms of the foregoing commission.

N. P. HUNT, *Commissioner.*

11 HILLSBOROUGH, ss :

Supreme Court, September Term, 1893.

STATE }
 vs.
 CLARENCE E. COLLINS }

Indictment for selling a package of oleomargarine not of a pink color, in violation of P. S. c. 127, ss. 19, 20. Trial by jury. Verdict guilty. The respondent is agent at Manchester of Swift & Co., an Illinois corporation, having its principal place of business in Chicago. The corporation manufactures oleomargarine and puts it up in packages in Chicago, and distributes the packages from there to different places—one of which is Manchester—where it maintains stores and sells the article at wholesale in the original packages. It has paid the special U. S. taxes imposed by the act of Congress of August 2, 1886, (Suplt. to R. S. of U. S., v. 1, p. 505), and has com-

plied with all other requirements of that act in respect to the manufacture and sale at wholesale of oleomargarine. The article has the color of butter—the same coloring matter being used to color it that is frequently used to color butter—and is made wholly or in part of fats, oils, or grease, not produced from milk or cream, in imitation of or as a substitute for butter. It is not manufactured in this State. The respondent as such agent sold in Manchester at wholesale at the store of the company, a package of said article weighing ten pounds, in the form it was put up in Chicago by his principal. The provisions of s. 19, c. 127, P. S. of this State were complied with, so far as the package was concerned, except the color of its contents was not pink. The oleomargarine sold was the oleomargarine of commerce as the same is known and dealt in as an article of food.

The respondent claimed that, upon these facts, he was not guilty because the statute of this State is in contravention of the Constitution of the United States and its amendments and of the laws of Congress; otherwise he admitted his guilt. The court ruled against the respondent as to the above claim, and he excepted.

Reserved.

WM. M. CHASE,
Presiding Justice.

[Endorsed:] Hillsborough case. *State v. Clarence E. Collins.* Solicitor-, Cross, Loveren. Copies dis. Nov. 29, 1893.

12

M'CH 16, '94.

Hills., 14.

STATE }
v. }
COLLINS. }

DOE, C. J.:

The need of a uniform operation of Federal law in all the States and the apparent degree of uncertainty as to the view one Federal court may take of this statute are reasons for a disposition of the case that will furnish an opportunity to carry the Federal question to the only tribunal by which that question can be settled.

Exception overruled.

13 STATE OF NEW HAMPSHIRE, } ss:
Hillsborough, }

I, Thomas D. Luce, clerk of the supreme court of the State of New Hampshire for the county of Hillsborough, do hereby certify that the foregoing is a true copy of the record in said action and of all papers on file in said cause, said court being the highest court of law or equity of the said State in which a decision could be had in the said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court this 16th day of April, A. D. 1894.

Seal Supreme Court
New Hampshire.

THOS. D. LUCE, *Clerk.*

I, Charles Doe, chief justice of the supreme court of the State of New Hampshire, do certify that Thomas D. Luce, Esquire, whose signature is affixed to the foregoing certificate, is clerk of said supreme court for the county of Hillsborough, and hath the keeping of the files, records, and proceedings of said court, and also of the files and records of the supreme judicial court, the court of common pleas, the superior court of judicature, and the circuit court, heretofore existing in this State, and is by law the proper person to make out and certify copies thereof, and that full faith and credit are and ought to be given to his acts and attestations done as aforesaid, and that his attestation above written is in due form, said court being the highest court of law or equity of the said State in which a decision could be had in the said cause.

In testimony whereof I have hereunto set my hand and caused the seal of the said supreme court to be hereunto affixed this 16th day of April, A. D. 1894.

Seal Supreme Court
New Hampshire.

CHS. DOE.

14 UNITED STATES OF AMERICA, {
State of New Hampshire. }

To the Honorable Charles Doe, chief justice of the supreme court of the State of New Hampshire :

Petition of Clarence E. Collins, of Manchester, in the county of Hillsborough and State of New Hampshire, respectfully shows that an indictment was found by the grand jury, at the September trial term, 1893, of the supreme court in and for said county of Hillsborough, against him under the Public Statutes of said State, chapter 127, sections 19 and 20, which read as follows :

" § 19. It shall be unlawful to sell, offer for sale, or keep in possession with intent to sell, in this State, any substance or compound made wholly or in part of fats, oils, or grease, not produced from milk or cream, in imitation of, or as a substitute for, butter or cheese, unless the same is contained in tubs, firkins, boxes, or other packages, each of which has upon it, to indicate the character of its contents, the words "Adulterated butter," "Oleomargarine," or "Imitation cheese" as the case may be, in plain roman letters not less than one-half inch in length, and so placed and made or attached that they can be readily seen and read and cannot be easily defaced ; and if the substance or compound is a substitute for cheese, unless the cloth surrounding it has a like inscription ; and if it is a substitute for butter, unless it is of a pink color. When any such substance or compound is sold in less quantities than the original packages contain, the seller shall deliver to the purchaser with it a label bearing the words indicating its character as above, in like letters.

§ 20. If any person shall sell, or offer for sale, or keep in possession with intent to sell, in this State, any substance or compound of the kinds described in the preceding section in a manner that is made unlawful by said section, or shall sell, offer for sale, or keep

15 in possession with intent to sell, any such substance or compound without disclosing its true character, he shall be fined not more than one hundred dollars, or be imprisoned not more than sixty days, or both," for selling a package of oleomargarine not of pink color, in violation of said statute; that upon said indictment there was a trial at said September term, and a verdict of guilty was returned by the jury under the instruction of the court.

Upon the trial of said case the facts were found that the respondent, your petitioner, at the time of the alleged offence was agent at Manchester aforesaid of Swift & Company, a foreign corporation, having its principal place of business in Chicago, State of Illinois, and there engaged in the manufacture and sale of oleomargarine in original packages, and that your petitioner, as such agent, sold in said Manchester, at wholesale, at the store of said Swift & Company, an original package of oleomargarine weighing ten pounds in the form in which it was put up in Chicago by his aforesaid principal, and for this sale said indictment was found against your petitioner; which oleomargarine sold was the oleomargarine of commerce as the same is known and dealt in as an article of food; that the provisions of section 19, chapter 127, of the Public Statutes of said New Hampshire were complied with so far as the package was concerned, except the color of its contents *were* not pink. It was further found as a fact in the trial of said case that said Swift & Company had paid a special United States tax imposed by the act of Congress of August 2, 1886 (Suplt. to R. S. of U. S., v. 1, p. 505), and had complied with all other requirements of that act in respect to the manufacture and sale at wholesale of oleomargarine.

Your petitioner, the respondent, claimed upon the said facts as found on trial that he was not guilty, because the statute aforesaid of the State of New Hampshire is in contravention of the Constitution of the United States and its amendments and the laws of

16 Congress. The court ruled against the respondent, your petitioner, and he excepted, and the case was transferred to the December law term, 1893, of the supreme court of said State of New Hampshire, and at the adjourned law term of said court in March, 1894, the exceptions were overruled and judgment on verdict was ordered, and at the trial term of said supreme court of Hillsborough county, holden at Manchester on the 7th day of April, 1894, judgment on the verdict was rendered and a fine imposed of one hundred dollars, which was duly recorded. The proceedings aforesaid upon the trial and the verdict by the jury and the transfer of the questions of law which arose upon the trial were before the highest court of said State in which a decision in said case could be had, and the judgment is final so far as the laws and courts of New Hampshire are concerned.

Said Swift & Company had complied with all the laws and regulations of the United States in the manufacture and sale at wholesale of oleomargarine in the original packages; the sale of oleomargarine for which said Collins was indicted was sold by him as agent of said Swift & Company in its original package; said oleomar-

garine is an article of commerce, as the same is known and dealt in, and the said sale was the act of said Swift & Company, a foreign corporation as aforesaid, through its agent, your petitioner, all of which aforesaid allegations or facts appear in the records of this case, copies of which are herewith submitted.

The said Collins claims that error in law appears of record in this case, and makes the following—

Assignment of Errors.

Said Collins in his aforesaid trial before the jury and before the supreme court of Nashua, New Hampshire, at its law term, contended that the said statute under which he was indicted as to him in the facts found were—

17 First. In contravention of section 8, article 1, of the Constitution of the United States, which provides that Congress shall have the power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

Second. That said statute is in contravention of that portion of article 6 of the Constitution of the United States which declares, "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

Third. That said statute of New Hampshire is in contravention of the aforesaid statute of the United States passed August 2, 1886.

Said courts overruled his said contentions, which is error in law.

Wherefore your petitioner prays the allowance of a writ of error, returnable in the Supreme Court of the United States, and for citation; and your petitioner will ever pray.

CLARENCE E. COLLINS,

By his attorneys, DAVID CROSS,

HARRY E. LOVEREN,

Manchester, New Hampshire.

May 8, 1894.—Ordered that a writ of error issue according to foregoing petition.

C. DOE,

Chief Justice of the Supreme Court of N. H.

18 UNITED STATES OF AMERICA, ss:

To the State of New Hampshire, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New Hampshire for the county of Hillsborough, wherein Clarence E. Collins, of Manchester, in said county of Hillsborough, is plaintiff in error and you are defend-

ant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles Doe, chief justice of the supreme court of the State of New Hampshire, this 15th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

C. DOE,

*Chief Justice of the Supreme Court of the
State of New Hampshire.*

19 EXETER, N. H., May 17th, A. D. 1894.

I accept due service of the within citation.

STATE OF NEW HAMPSHIRE,
By EDWIN G. EASTMAN,
Attorney General of said State.

20 STATE OF NEW HAMPSHIRE, } ss :
Hillsborough,

I, Thos. D. Luce, clerk of the supreme court within and for said county of Hillsborough, hereby certify that the foregoing are true copies of—

- I. The writ of error and
- II. The return thereon,
- III. The record in the case of Clarence E. Collins,
- IV. The application for writ of error and
- V. The assignment of errors,
- VI. And of all the proceedings in said case, with all things concerning the same, together with
- VII. The original citation and
- VIII. The acknowledgment of service thereon.

In witness whereof I have hereto set my hand and affixed the seal of said supreme court this twenty-first day of May, in the year of our Lord one thousand eight hundred and ninety-four.

[Seal Supreme Court New Hampshire.]

THOS. D. LUCE, *Clerk.*

21 *Bond on Writ of Error.*

Know all men by these presents that we, Clarence E. Collins, of Manchester, in the county of Hillsborough and State of New Hampshire, as principal, and Horatio W. Heath and George B. Chandler, both of said Manchester, as sureties, are held and firmly bound unto the State of New Hampshire in the full and just sum of one thousand dollars, to be paid to the State of New Hampshire or its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a supreme court of New Hampshire, holding session in and for the county of Hillsborough and State of New Hampshire, against Clarence E. Collins, judgment was rendered against and final sentence imposed upon the said Clarence E. Collins that he may pay a fine of one hundred dollars and costs, and the said Clarence E. Collins having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court of the State of New Hampshire to reverse the judgment in the aforesaid matter, and a citation directed to the State of New Hampshire, citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at Washington on the second Monday of October next :

Now, the condition of the above obligation is such that if the said Clarence E. Collins shall prosecute his said writ of error to effect, and if he fail to make his plea good shall answer all damages and costs, then the above obligation to be void ; else to remain in full force and virtue.

CLARENCE E. COLLINS. [SEAL.]
 HORATIO W. HEATH. [SEAL.]
 GEORGE B. CHANDLER. [SEAL.]

Signed, sealed, and delivered in presence of—

GEO. H. CHANDLER.

HARRY E. LOVEREN.

Approved :

C. DOE,

Chief Justice of said Supreme Court of N. H.

22 A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond ; which bond is on file in the office of the clerk of the supreme court of the State of New Hampshire within and for the county of Hillsborough.

[Seal Supreme Court New Hampshire.]

Attest :

THOS. D. LUCE,

Clerk Supreme Court, County of Hillsborough.

23 UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the judges of the supreme court of the State of New Hampshire, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the State of New Hampshire in which a decision could be had in or upon an indictment found by the grand jury at a term of the said supreme court holden at Nashua, in and for said county of Hillsborough and State of New Hampshire, against Clarence E. Collins, of Manchester, in said county of Hillsborough, petitioner for writ of error to the United States Supreme Court, at Washington, in the

District of Columbia, and the said State of New Hampshire appearing and opposing said petitioner for his writ of error, wherein was drawn in question the validity of a statute or law of said State of New Hampshire, on the ground of its being repugnant to the Constitution and laws of the United States, and the decision in and by said State court was in favor of the validity of such State law, and a manifest error hath happened, to the great damage of the said Clarence E. Collins, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller,
Seal of Circuit Court Chief Justice of the United States, the twelfth
New Hampshire. day of May, in the year of our Lord one thousand eight hundred and ninety-four.

FREMONT E. SHURTLEFF,

*Clerk of the Circuit Court of the United States
for the District of New Hampshire.*

Allowed by—

C. DOE,

*Chief Justice of the Supreme Court
of the State of New Hampshire.*

24 STATE OF NEW HAMPSHIRE, }
Hillsborough, } 88:

And now here the judges of the supreme court of the State of New Hampshire make return of this writ by annexing hereto and sending herewith, under the seal of the said supreme court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, Thomas D. Luce, clerk of said supreme court within and for the county of Hillsborough, have hereto set my hand and the seal of said court this twenty-first day of May, A. D. 1894.

[Seal Supreme Court New Hampshire.]

THOS. D. LUCE, *Clerk.*

Endorsed on cover: Case No. 15,598. New Hampshire supreme Court. Term No., 110. Clarence E. Collins, plaintiff in error, vs. The State of New Hampshire. Filed May 26th, 1894.